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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91173105
Party	Plaintiff Honda Motor Co., Ltd.
Correspondence Address	Mark G. Matuschak Wilmer Cutler Pickering Hale and Dorr LLP 60 State Street Boston, MA 02109 UNITED STATES mark.matuschak@wilmerhale.com, cora.han@wilmerhale.com
Submission	Plaintiff's Notice of Reliance
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Date	10/27/2008
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/339,571

Published: May 30, 2006 at TM 674

Mark: DEALERDASHBOARD

HONDA MOTOR CO., LTD.,	)	Opposition No. 91/173,105
	)	
Opposer,	)	
	)	NOTICE OF RELIANCE
v.	)	
	)	
MICHAEL DALTON,	)	
	)	
Applicant	)	
	)	

**TAB A**

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3

4 In the Matter of Application Serial No. 78/339,571  
Published: May 30, 2006 at TM 674  
5 Mark: DEALERDASHBOARD

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7 -----

8 HONDA MOTOR CO., LTD.,

9 Opposer,

10 vs.

11 MICHAEL DALTON,

12 Applicant.

13 -----

14

15

16 Deposition of: MICHAEL E. DALTON

17 Taken: By the Opposer  
Pursuant to Notice

18 Date: May 5, 2008

19 Time: Commencing at 10:02 a.m.

20 Place: Thompson Hine LLP  
21 312 Walnut Street  
14th Floor  
22 Cincinnati, Ohio 45202-4089

23 Before: Wendy L. Raymer, RPR, CRR  
24 Notary Public-State of Ohio

25

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2

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3

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On behalf of the applicant:

8

LAW OFFICES OF CATHY R. COOK

9

BY: Jonathan P. Dameron, Esq.

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Cincinnati, Ohio 45202

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## 1 I N D E X

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3 MICHAEL E. DALTON

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1 MICHAEL E. DALTON

2 of lawful age, an applicant herein, being first duly  
3 sworn as hereinafter certified, was examined and  
4 deposed as follows:

5 EXAMINATION

6 BY MS. FINGUERRA-DUCHARME:

7 Q. Good morning, Mr. Dalton.

8 A. Good morning.

9 Q. I'm Dyan Finguerra-DuCharme. I'm here on  
10 behalf of Honda Motor Co. Have you ever been deposed  
11 before?

12 A. Yes.

13 Q. Okay. When were you deposed?

14 A. Let's see. You know, I can't even recall  
15 what the litigation was. It might have -- it might  
16 have even been a divorce --

17 Q. Okay.

18 A. -- but at this stage I don't --

19 Q. Okay. It was a while ago, though?

20 A. Yes.

21 Q. Okay. And it would have had nothing to do  
22 with trademarks, as far as you remember?

23 A. No.

24 Q. Okay. And so you understand what the  
25 ground rules are, that if I ask a question and you do

1 not -- it's unclear, let me know. You can take a  
2 break whenever you want to take a break, just let us  
3 know. For the most part -- if we're in the middle of  
4 something, I might want to finish up a line of  
5 questioning, but just let me know if you're getting  
6 tired or if you want to get a drink or have to use  
7 the bathroom.

8           Your lawyer here might make some  
9 objections, so if he does, he'll make them for the  
10 record. And then unless it's privileged information,  
11 you'll need to answer the questions. And if you  
12 could just give verbal responses instead of nodding  
13 your head, that would be helpful as well.

14       A.    Okay.

15       Q.    Right, exactly. So can you let us know  
16 what your residential address is?

17       A.    The -- my official residential address is  
18 P.O. Box 18137, Cincinnati, Ohio, 45218.

19       Q.    And that's your -- that's your business  
20 address, too?

21       A.    Correct.

22       Q.    Okay. And you might want to speak slowly  
23 so that she can get everything down. Can you walk me  
24 through your -- your educational background, I guess  
25 after -- after high school? Did you go on to

1 college?

2 A. I did.

3 Q. Where did you go to school?

4 A. Started out at University of Cincinnati,  
5 associate's of business administration. From there I  
6 went to Xavier University, bachelor's of business  
7 administration.

8 Q. Okay. And what kind of degree did you  
9 graduate with?

10 A. Bachelor's of business administration.

11 Q. A bachelor's of business -- okay. Can you  
12 speak a little -- I guess a little louder?

13 A. Okay.

14 Q. Because it's -- it's hard to hear it all.

15 A. Okay.

16 Q. And so after you graduated, what did  
17 you -- what was your job upon graduation?

18 A. My first job out of college was with Alfa  
19 Romeo as a regional -- regional service manager, I  
20 believe, was the title.

21 Q. Okay. So you've always been interested in  
22 cars then?

23 A. Yes. My last two years of high school  
24 were vocational.

25 Q. Okay. And then what did you do for Alfa

1 Romeo?

2 A. Regional service manager.

3 Q. And what did that entail in that job?

4 A. I had responsibility for seven states,  
5 calling on automobile dealerships with regards to  
6 their service department. I did warranty audits. I  
7 did technical training at the dealership. I was  
8 the -- the liaison between the manufacturer and the  
9 automobile dealerships.

10 Q. Okay. And how long did you do that for?

11 A. I was with Alfa Romeo one year.

12 Q. One year. And what did you do after Alfa  
13 Romeo?

14 A. After Alfa Romeo, I went to Peugeot Motors  
15 of America.

16 Q. Okay.

17 A. At Peugeot Motors of America, I was  
18 district parts and accessories manager --

19 Q. Okay.

20 A. -- for five states, and there I dealt with  
21 the parts department with regards to inventory turn  
22 ratios, dealer profitability, dealer financial  
23 analysis, composite analysis, how a dealer performs  
24 in comparison to the broad base either regionally or  
25 nationally, and acted as liaison between a

1 manufacturer and a dealer and adviser, made  
2 recommendations to dealers -- dealers, how they could  
3 improve their operations.

4 Q. Okay. And when -- what year was this?

5 A. We're looking at early '80s.

6 Q. I should have asked, when did you graduate  
7 from -- when did you get your -- your business  
8 degree?

9 A. My bachelor's degree was in May of '82.

10 Q. Of '82, okay. So then what did you -- so  
11 you were there for how many years at --

12 A. Peugeot was two years.

13 Q. Two years.

14 A. Uh-huh.

15 Q. And what did you do when you left Peugeot?

16 A. I went to Saab.

17 Q. Saab, okay.

18 A. District parts and accessories manager. I  
19 had five states. Basically the same responsibility.

20 Q. These are all very nice cars, I must say.

21 A. Yeah.

22 Q. I hope you got a company car in the deal.

23 A. Absolutely. Every month.

24 Q. Really?

25 A. 5,000 miles you get a different one, and I

1 traveled five states, so --

2 Q. Wow. And did you have your choice, or was  
3 there -- did they limit it?

4 A. You know, it all depends. It was -- it  
5 was based on distribution, sales, you know. Of  
6 course you couldn't get a vehicle that --

7 Q. A Saab convertible?

8 A. Well, right.

9 Q. That's what I wouldn't mind, so --

10 A. Right.

11 Q. Okay. So now -- so it sounds like you  
12 were sort of in the same role, you were -- you were  
13 coordinating with parts and services and the dealers  
14 and the manufacturer and sort of coming up with ideas  
15 as to how they can run their dealerships better?

16 A. Correct.

17 Q. Okay. So, now, you were at Saab for how  
18 many years?

19 A. One year.

20 Q. One year. Is it -- is it normal in your  
21 business to sort of go from manufacturer to  
22 manufacturer?

23 A. Well, unfortunately during the '80s was  
24 the turbulent time for the auto industry. There was  
25 mergers, acquisitions, buyouts, so traditionally the

1 automotive industry is a high turnover industry,  
2 especially at the dealership level. With  
3 manufacturers, if you're able to maintain longevity  
4 with a manufacturer in our generation time, it's --  
5 it's a plus.

6 I mean, it used to be you could go to work  
7 for General Motors and work from the day you went  
8 into the shop floor until you retired. During the  
9 '80s, the political climate, the competition, things  
10 changed. So it wasn't unusual for several  
11 manufacturers to, you know, make organizational  
12 changes. In fact, Alfa Romeo left this country.  
13 Peugeot left this country, so --

14 Q. Right.

15 A. -- it's -- and they haven't reentered this  
16 country as of yet with their products, so it was very  
17 turbulent times for the auto industry during that  
18 period, unfortunately for me.

19 Q. It seems like it's probably that way  
20 today, too?

21 A. It is. And, in fact, Chrysler is going  
22 through some -- well, all the manufacturers are.

23 Q. Right.

24 A. Honda is probably not fortunately, but --

25 Q. Right, right.



1           A.    -- fortunately.

2           Q.    Okay.  So now you were at Saab for a year.

3 Where did you go after Saab?

4           A.    I went with a company called ASC,

5 Incorporated.

6           Q.    Okay.

7           A.    They are an aftermarket Tier I supplier --

8           Q.    Okay.

9           A.    -- to the auto industry.  They probably at  
10 that time built 90 percent of the convertibles.  They  
11 would design and engineer a product, and, in fact,  
12 they -- the designed and engineered the -- the Saab  
13 convertible.  They would present that product to the  
14 manufacturers.  The manufacturer would either buy the  
15 project or not.

16                   If the manufacturer did not buy the  
17 project and they -- ASC found it to be a viable  
18 product, they would do an aftermarket release of the  
19 product, and they would do -- you would do a  
20 ship-through program.  For example, General Motors  
21 bought the Camaro convertible project but did not buy  
22 the Firebird convertible project.  So ASC found that  
23 to be a viable product.  They would drop-ship the car  
24 to an ASC plant, convert that to a convertible, and  
25 transfer it to the dealership.

1           My responsibility, I had seven states, I  
2 was involved in the sales and -- I was regional sales  
3 and marketing. I was involved in installing  
4 dealerships, and so my job -- in the aftermarket  
5 division. So my job would be to call on a  
6 dealership, establish open points to distribute  
7 vehicles.

8           They also did open-air systems with  
9 regards to electric power sunroofs, manually-operated  
10 sunroofs, and they had their own franchise network of  
11 aftermarket installers. Dealer sells an automobile  
12 at their dealership, customer wants a sunroof in that  
13 product, they would then sell the customer that --  
14 the service.

15           They would send it to an ASC-licensed  
16 franchisee. They would install that sunroof, and it  
17 would be in the -- in the aftermarket. So it was  
18 also my responsibility to call on -- in my region of  
19 responsibility to call on those distributors,  
20 increase sales, create marketing plans, do sales and  
21 marketing training.

22         Q.    Okay. So it's -- it was a little  
23 different then, this job? It seems like you were  
24 more of a -- of a salesman and marketing person as  
25 opposed to --

1           A.    You know, that -- for the layman, I guess  
2 that would probably be the -- the interpretation, but  
3 everything you do in the automobile industry is  
4 sales, whether it be service or parts. Because if  
5 you're in service, you're repairing a vehicle.  
6 First, you have to diagnose the problem, determine  
7 what needs to be -- be repaired, and then you have to  
8 sell that service to the customer.

9           Likewise with parts. The customer comes  
10 to your parts counter. You have to create -- create  
11 an environment that they're going to make you top of  
12 mind to come to them to purchase the product. So  
13 sales is a function of each responsibility that I had  
14 in the automotive industry.

15          Q.    Okay. So how long were you with this  
16 aftermarket company for?

17          A.    Two years.

18          Q.    Two years. And what did you do after --  
19 now, what -- what time frame do you think we're in,  
20 late '80s now or is this the '90s?

21          A.    Right now, '90.

22          Q.    Okay.

23          A.    Right at '90.

24          Q.    So what did you do after you left them?

25          A.    '90. From that point forward, I have had

1 Thomas Michael Agency, which is my own.

2 Q. Oh, so you created your own company?

3 A. Uh-huh.

4 Q. It was Thomas Michael AC (sic), you said?

5 A. Agency.

6 Q. Agency. What made you name it Thomas

7 Michael Agency, as opposed to Michael Dalton Agency?

8 A. When I originally established it, I had a  
9 partner.

10 Q. Okay.

11 A. I was the Michael, he was the Thomas.

12 Q. Oh, interesting, okay.

13 A. And unfortunately he has passed --

14 Q. Oh, I'm sorry.

15 A. -- due to a heart attack, so --

16 Q. So what did your agency do?

17 A. We originally started out doing  
18 advertising sales.

19 Q. Okay.

20 A. We create -- we had a telemarketing office  
21 that called on small businesses to do print  
22 advertising on a product, and then we distributed  
23 that product to the customer.

24 Q. Was this outside of the automotive field  
25 then?

1           A.    It was, yeah, uh-huh.

2           Q.    So you just decided to leave the  
3 automotive industry?

4           A.    I didn't really leave.  I mean, I was  
5 still -- still seeking opportunities in that  
6 industry --

7           Q.    Okay.

8           A.    -- but this particular opportunity  
9 prevailed itself.  If you recall, '90 was a  
10 recession.

11          Q.    Yeah.

12          A.    A lot of organizational downsizing.  The  
13 automotive industry was dry, and, you know, we all do  
14 what we have to do when the time --

15          Q.    Right.

16          A.    -- for, you know --

17          Q.    I understand.  So how long were you  
18 running this telemarketing company for?

19          A.    I think it lasted for about 2 ½ years.

20          Q.    Okay.  And then what did you do after  
21 that?

22          A.    I've been doing consulting work and sales  
23 and marketing for -- not just in the automotive  
24 industry, but also in the electronics industry.

25          Q.    Okay.

1 A. And that's what I do today.

2 Q. That's what you do today.

3 A. Uh-huh.

4 Q. So why don't you tell me what -- in a  
5 nutshell what it is that your employment is now.

6 A. Well, I -- I still have Thomas Michael  
7 Agency, so --

8 Q. Oh, you're still doing that?

9 A. Uh-huh.

10 Q. Okay.

11 A. I'm self-employed.

12 Q. And anything else?

13 A. No.

14 Q. Okay. I just want to make sure that I --  
15 I understand what -- what your current -- because you  
16 haven't mentioned DealerDashboard.com at all, and I  
17 thought that that was one of your businesses?

18 A. It's part of the Thomas Michael Agency,  
19 yes.

20 Q. That's part of the agency?

21 A. Uh-huh.

22 Q. Okay. So why don't you tell me what is --  
23 what are the components of your agency?

24 A. Well, it's -- it's all a sole  
25 proprietorship. Thomas Michael --

1 Q. What are the things that you do, in other  
2 words, through your agency?

3 A. I -- I have DealerDashboard. I do, you  
4 know, the -- the sales and marketing for that, and I  
5 do consulting work for retail suppliers,  
6 manufacturers. For example, I call on, you know,  
7 your big box electrics, electronics refers to Best  
8 Buy, the Circuit City, for different manufacturers.  
9 Currently I -- I do a project for Epson, American  
10 Printers. So I -- it's sales and marketing. I go in  
11 and teach their personnel how to present their  
12 product.

13 Q. Okay. All right. So you're aware that  
14 you're here today to testify in the opposition  
15 proceeding between American Honda and yourself,  
16 right?

17 A. Correct.

18 Q. Okay. Did you prepare for the deposition  
19 today?

20 A. Meaning -- I mean, I entered -- I answered  
21 your interrogatories. I sent you some exhibits. As  
22 far as did I rehearse, is that -- is that your  
23 question?

24 Q. If you want to phrase it like that. Or  
25 did you --

1           A.     Did I -- did I --

2           Q.     -- do anything yesterday or the day before  
3 or the last week to --

4           A.     Did I rehearse with legal representation  
5 or something? Absolutely not.

6           Q.     Okay. Did you talk about this deposition  
7 with anybody, getting ready for it?

8           A.     Well, sure, I talked with my mate.

9           Q.     Okay. And I assume that you understand  
10 what the opposition proceeding is about between Honda  
11 and yourself?

12          A.     I understand they're opposing, yes.

13          Q.     Okay. Why don't you tell me what your  
14 understanding is of the proceeding.

15          A.     It's my understanding that they're  
16 opposing my trademark for which I tried -- which I'm  
17 in the process of -- of registering my intellectual  
18 property rights, and Honda has decided to oppose that  
19 registration.

20          Q.     Okay. All right. We -- you spoke a  
21 moment ago about -- a moment ago about  
22 DealerDashboard -- the company DealerDashboard --

23          A.     Uh-huh.

24          Q.     -- which, I guess, is part -- it's part of  
25 your agency. And you said that you formed it -- how



1 many years ago do you think did you form it? Back in  
2 the late '90s, was it?

3 A. '99.

4 Q. '99?

5 A. Uh-huh.

6 Q. Okay. How was it organized? You said it  
7 was a sole proprietorship, so it's just you who runs  
8 DealerDashboard.com?

9 A. Correct.

10 Q. Okay. Can you describe to me the services  
11 that DealerDashboard.com provides?

12 A. DealerDashboard.com is a -- is a Web site.  
13 It provides the opportunity for consumers and  
14 dealerships to communicate without third-party  
15 intervention, i.e., the manufacturer. It allows the  
16 consumer to visit the Web site, click on various  
17 links.

18 There's opportunities for them to do  
19 research in the automotive industry. There's  
20 opportunities for them to purchase various products  
21 and services via affiliate links, whether it be  
22 parts, accessories, from not only manufactured but --  
23 manufactured franchise dealers, but also independent  
24 parts, sales, things like that.

25 The services that I provide, I have a

1 product that I offer to dealerships with regards to  
2 floorplan financing. A dealership can go to  
3 DealerDashboard.com, inquire about floorplan  
4 financing for their used vehicles, submit an  
5 application to me, and I have a third-party vendor  
6 that processes that -- processes that, finances it,  
7 and for that I receive compensation.

8 Q. Okay. So let's go back to -- you had said  
9 that it provides the opportunity for consumers --  
10 well, for dealerships to communicate. So how is it  
11 that the dealerships are communicating through  
12 DealerDashboard.com?

13 A. A dealership has the opportunity to  
14 participate in DealerDashboard through various  
15 channels. DealerDashboard was the first product in  
16 the United States to offer a dealer-to-dealer  
17 wholesale online auction that was developed.

18 A dealer has an opportunity to participate  
19 by paying a monthly subscription fee and then  
20 participate in posting inventory that they would want  
21 to wholesale. And other dealerships who are also  
22 participating in that subscription service could go  
23 online, view their inventory, bid online for that  
24 particular product, and then an exchange is made.  
25 That -- that is done via a marketing agreement with a

1 Canadian firm who develops the software and gave me  
2 the distribution rights for the United States.

3 Q. Okay. So how many people or dealerships  
4 participate right now?

5 A. Currently there is none.

6 Q. There is none right now?

7 A. Correct.

8 Q. Okay. Are there any dealers that are  
9 participating in the finance plan that you had spoken  
10 about?

11 A. Yes, there are, and I had provided you  
12 those.

13 Q. How many are there?

14 A. I think there was four or five currently.

15 Q. And when did you first engage those  
16 dealers?

17 A. I don't recall.

18 Q. Was it within the past year, past two  
19 years?

20 A. Some of them have been within the past  
21 year, yes.

22 Q. When do you --

23 A. When the first one actually came on  
24 board -- I've been -- I've been offering it for  
25 years. The first one came on board maybe two years

1 ago.

2 Q. Two years ago, okay. So we're in 2008.

3 So your first dealer was in 2006?

4 A. Possibly.

5 Q. Before then, the -- the use of

6 DealerDashboard.com was --

7 A. Let me correct that.

8 Q. Okay.

9 A. Okay. First dealership with my current  
10 vendor. I had a prior vendor, so it may have been  
11 2001 when I -- when the -- I don't have that readily  
12 available at the top of my head, mainly because I  
13 don't maintain those records. I'm -- I'm an agent,  
14 sales agent. I don't maintain them. I don't process  
15 them. I don't finance them. I'm -- I'm the sales  
16 commissioned agent, basically.

17 Q. Okay. And I did a lot of surfing on your  
18 Web site.

19 A. Uh-huh.

20 Q. And I -- the consumer angle of it I -- I  
21 understand --

22 A. Uh-huh.

23 Q. -- and I think it's very useful actually.  
24 It's the dealership part that I want to get my arms  
25 around a little bit better.

1           A.     Uh-huh.

2           Q.     So you -- from the beginning when you  
3 conceived of DealerDashboard.com, you had two goals.  
4 One was to reach the consumers, and one was to allow  
5 dealerships an opportunity to be managed better, to  
6 be able to have information sort of in one place, and  
7 to communicate with each other?

8           A.     Uh-huh.

9           Q.     Is that fair?

10          A.     Uh-huh.

11          Q.     Okay. For that part of the dealership,  
12 for any of the services that you provided, when do  
13 you think that you first started -- when was your  
14 first customer on the dealership end?

15          A.     Well, that's hard to say, because when I  
16 first -- when the order was first designed and  
17 implemented, it was -- it was a period of time  
18 when -- when, you know, it was the Wild West in  
19 the -- in the Internet. We were an innovator, one of  
20 the -- some of the first people that -- that got  
21 involved in that arena.

22                 I think initially, it was an informational  
23 provider type of a system, and so it would be hard to  
24 say how many dealers utilized the thing. I know I --  
25 I would get inquiries, e-mail inquiries.

1 Unfortunately, I didn't maintain them, but I would  
2 get inquiries. But as far as actually generating a  
3 revenue from -- from those dealer services, if that's  
4 the question I think I'm interpreting, I think I'm --  
5 you're looking at maybe 2001.

6 Q. Okay. All right. I'm looking at when it  
7 was that you first started to provide those services  
8 to the dealerships.

9 A. Okay. I provided dealerships with  
10 services prior to even forming DealerDashboard.  
11 DealerDashboard was a -- it was a new paradigm where  
12 the automotive industry was transforming from the  
13 traditional way of doing business to the Web. And I  
14 have a minor in computer programming, so I was one of  
15 the innovators who entered that -- that industry. I  
16 mean, this is before the Google time, before --  
17 Autoweb was just becoming --

18 Q. Right.

19 A. And I worked for several of those as  
20 consultants, several of the other innovators in the  
21 automotive industry. I will say this. In the  
22 automotive industry, there was two national  
23 conferences with regards to Web and Internet  
24 development for automobile dealerships. By the  
25 second convention that was ever originated,

1 DealerDashboard had been formed.

2           Q.     Okay. All right. I actually have some  
3 printouts of -- of your Web site, which I thought  
4 might be useful for us to -- for you to walk me  
5 through it.

6           MS. FINGUERRA-DUCHARME: So if you can  
7 mark this as Exhibit 1, that would be terrific.  
8 I'll give you the color copy.

9           THE WITNESS: Okay. Thank you.

10           (Deposition Exhibit 1 was marked for  
11 identification.)

12 BY MS. FINGUERRA-DUCHARME:

13           Q.     So if you can just sort of walk me through  
14 your Web site. This is -- this would be the -- when  
15 I typed in DealerDashboard.com, this was the first --  
16 the first three pages that would form what my  
17 screenshot was.

18           A.     As it pertains to 5/30, 2008 -- currently  
19 in its existence as 5/3, 2008?

20           Q.     Exactly.

21           A.     Is that correct?

22           Q.     Yes. And then the last few pages, I just  
23 clicked -- I just clicked on a couple of -- of links.

24           A.     So to preface, these -- these questions  
25 are in regard to current available services to

1 dealerships; is that correct?

2 Q. Exactly.

3 A. Okay.

4 Q. So Exhibit 1 reflects a printout -- the  
5 first three pages of Exhibit 1 are a printout from  
6 the DealerDashboard.com. And then the last few pages  
7 of Exhibit 1 is -- are printouts from various links  
8 from -- that were on DealerDashboard.com.

9 So let's focus on the first three pages.  
10 So walk me through the message that you're saying to  
11 consumers, what -- the services that you're offering  
12 when you get to the home page of your Web site.

13 A. Well, you can see this is a -- this is a  
14 portal. It's presenting the theme of  
15 DealerDashboard. It has a graphic of a dashboard at  
16 the -- in the middle of the page, and at the top of  
17 the page it has a scenic view.

18 And what I'm trying to portray to the  
19 public is this is the future view of the automotive  
20 world with regards to the Internet as you're sitting  
21 in the driver's seat. And at the beginning of  
22 developing DealerDashboard, I even used the slogan,  
23 "Behind the wheel, we deliver," using the "Behind the  
24 wheel" as a metaphor for sitting behind a dashboard  
25 and also behind the wheel as in mouse wheel click,



1 okay?

2                   So that's what I'm trying to portray to  
3 the -- to the public as they visit this Web site.  
4 And as you see, there's various services here that  
5 are not only available to the consumer but to the  
6 dealership.

7                   For example, a consumer can take and --  
8 and get free dealer invoice pricing and free used-car  
9 values. I'm talking about on the left-hand side, the  
10 first graphic. They can do some research on  
11 purchasing a vehicle.

12                   That goes -- by clicking on that link, it  
13 will take you to a portal where I have an affiliate  
14 marketing agreement, so at that point in time a  
15 consumer can request a bid on an automobile. Those  
16 are then forwarded to dealers throughout the country  
17 based on their zip code that the -- the consumer puts  
18 in. And, therefore, a consumer can -- can  
19 communicate directly with the dealer via a generated  
20 lead which is a revenue source.

21           Q.     Okay.

22           A.     On the right-hand side, you'll see that  
23 I've implemented -- this is also with an affiliate  
24 agreement with autobytel.com. You will see that at  
25 that point in time, it not only reveals to the

1 consumer but to a dealer, if the dealer were to visit  
2 DealerDashboard, the top ten vehicles that are in the  
3 market currently. And these change from time to time  
4 as a -- as a feed, automatic feed.

5           On the left-hand side, you'll see it's --  
6 it's broken up into "Consumers" and "Business 2  
7 Business." I'm talking on the -- so if you go down,  
8 a consumer can go and research new and used cars.  
9 They can click and get to see the current rebates  
10 that are available to them.

11           Some -- I use affiliate partnerships.  
12 Sometimes those links are not functioning. Sometimes  
13 agreements that I have, the people no longer provide  
14 those services, so I'm constantly modifying the  
15 source of -- that I would make that available.

16           Q.    It seems like autobytel is a big -- is a  
17 big link that a lot of these resolve to?

18           A.    It is currently. And that name has  
19 changed, just like in the merger and acquisitions  
20 with regards to the automobile industry, same way has  
21 been with the -- in the Internet industry.

22           Originally, Autoweb was the major.  
23 Autobytel bought them out, so currently -- and it's  
24 actually not Autobytel, it's a different -- AIC,  
25 Inc., I think, is where my affiliate agreement is,

1 and they're, like, the parent company. And they  
2 bought up and consolidated a lot of the companies,  
3 but, you know -- so it has evolved over time due to  
4 market conditions.

5 Q. What is your agreement then with -- with  
6 autobytel? So do you get, like, a click-through feed  
7 with them --

8 A. Correct.

9 Q. -- every time somebody comes from your Web  
10 site to autobytel?

11 A. Well, it's a co-branded site,  
12 DealerDashboard.

13 Q. Okay.

14 A. So in all likelihood, when they click  
15 through, they're going to see DealerDashboard, the  
16 DealerDashboard logo, which would be at the bottom of  
17 the page there, you'll see a dashboard.

18 Q. Here. Let's see, this one doesn't have  
19 it.

20 A. It would be on page 2. Do you see the  
21 dashboard emblem, DealerDashboard.com?

22 Q. Yeah.

23 A. Okay. That -- in all likelihood, that is  
24 going to be at the top of the page. So dealer,  
25 consumer, would still have the same identity across,

1 but it's basically --

2 Q. Oh, I see.

3 A. -- it's basically a co-branded site  
4 with --

5 Q. If you go four pages in, this -- I clicked  
6 into a link for --

7 A. Yeah. As they say, it's got the -- I'm  
8 looking at page 1 of 2 where a partner, ASPC -- see,  
9 if you look there, it says AutoWorld.com?

10 Q. Yeah.

11 A. Okay. That's -- that's who I have an  
12 affiliate agreement with, a co-branding affiliate  
13 agreement, not just an affiliate agreement. So you  
14 can see that DealerDashboard is up at the top.

15 Q. Yep.

16 A. And it still gives the appearance that it  
17 originates from DealerDashboard, but it is -- that  
18 information is provided by a third party.

19 Q. Okay. And this is through -- so this is  
20 through an agreement, and you have an agreement with  
21 them that you get some kind of -- of a fee for every  
22 time a consumer goes from your portal to their Web  
23 site --

24 A. Right.

25 Q. -- for information?

1 A. Correct.

2 Q. Okay. So where is the dealer services?

3 A. If you look over here, it says, "Business  
4 2 Business" on the left-hand side.

5 Q. Yeah.

6 A. Okay. You have "D2D Auction." That would  
7 be referring to the wholesale online auction that I  
8 had spoken about earlier.

9 Q. Yep.

10 A. If you see "Floorplan Financing," if you  
11 click on there, the dealership would have the  
12 opportunity to submit an application for "Floorplan  
13 Financing" for their vehicles.

14 Q. Okay.

15 A. Okay.

16 Q. And you coordinate that then with their  
17 money lender?

18 A. Correct. It's branded DealerDashboard.  
19 It comes to -- they submit their application via fax.  
20 All their documentation, dealer agreement, personal  
21 financials, okay, those come to me.

22 Q. Okay.

23 A. I reviewed them initially. If they meet  
24 my underwriting guidelines, which have been outlined  
25 from the lenders that I have an affiliation agreement

1 with, then I would submit it to them.

2 Q. Okay.

3 A. "Money Lenders," if you click on that,  
4 that is a publication that's available to commercial  
5 dealerships that, if they were looking for expansion  
6 capital, inventory financing, looking to build a  
7 building, looking for lenders, that -- that is a  
8 directory of all -- you know, I wouldn't say "all,"  
9 but it's compiled of -- of a lot of different various  
10 lenders.

11 I sell that publication. That publication  
12 is available for -- for sale. I have some -- and  
13 that's another product I really -- I have sold. I'd  
14 have to get the exact date on it. Then, you know, a  
15 dealer would get that publication, and then they  
16 could determine these particular banks, these  
17 particular lenders do inventory financing. I could  
18 submit my application to them.

19 Q. Okay.

20 A. "Target Marketing," they would click on  
21 that, and that has to do with data mining. It's  
22 through a third-party vendor. What that allows the  
23 dealership to do, they would inquire and would do a  
24 statistical analysis with regards to their historical  
25 data consumers.

1           So if they decided to -- to engage us in  
2 a -- in a project, we would take all of their  
3 customers that they had within the last three years,  
4 enter that in a database, and then we have criteria  
5 that's designed to do demographics, who are your  
6 customers, where are your customers located. And the  
7 theory behind that is if, you know, you have a  
8 concentration of -- of customers in a particular zip  
9 code, it's going to be more effective for you to --  
10 to target your advertising in that particular market.

11           But it goes much more specific than that,  
12 not just where the people live, but as far as, you  
13 know, average income, price of house, so that they  
14 can actually target market their -- their efforts to  
15 increase their business. Make sense?

16           Q.    It does make sense. I just --

17           A.    Okay.

18           Q.    It's interesting, because to me it sounds  
19 like a very useful tool. And it's curious that the  
20 marketing is driven towards trying to get the  
21 particular dealership on board as opposed to trying  
22 to sell this to the manufacturer. Because if the  
23 manufacturer engaged you, then it would be sort of a  
24 directive to the dealerships to --

25           A.    I'm certainly --

1 Q. -- use this.

2 A. I'm certainly willing to sell my services  
3 to Honda if they would be interested.

4 Q. No, I'm not -- I'm not speaking on Honda's  
5 behalf on that at all. I'm just saying, it seems to  
6 me that that would be --

7 A. Well --

8 Q. I'm sure you thought of that, it just --

9 A. Well, there -- you know, there -- there  
10 are products out there that -- that do these for  
11 manufacturers, and a lot of the knowledge that I have  
12 was gained through my experience working for  
13 manufacturers. But there's a whole niche that --  
14 that the manufacturers are not even involved in, and  
15 that's the independent used-car dealer. So this is  
16 geared to those --

17 Q. I see.

18 A. -- particular individuals.

19 Q. Okay. That makes sense.

20 A. Okay. So, you know, your -- your average  
21 guy who has been a car salesman for ten years and  
22 gets his -- you know, gets his little lot and starts  
23 his own car dealership, you know, he -- he doesn't  
24 have any affiliation with the -- with the  
25 manufacturer.



1 Q. And he doesn't have any working -- he  
2 doesn't have any central computer system that he's  
3 drawing upon --

4 A. Correct.

5 Q. -- from the manufacturer, so he has got to  
6 start from scratch?

7 A. Correct.

8 Q. Okay.

9 A. And so that -- you know, that's  
10 where -- you know, I --

11 Q. That's --

12 A. I can't compete with a Honda. I can't  
13 compete with -- with, you know, the deep-pocket --

14 Q. Right.

15 A. -- people, but I certainly can compete in  
16 the independent --

17 Q. I understand.

18 A. -- automotive car dealers.

19 Q. Okay.

20 A. Okay. "Dealers Automall," that's a --  
21 that's a subsection of the dealer-to-dealer auction.  
22 What that does is provide those who participate in  
23 the auction and subscribe to that monthly service,  
24 they can post their inventory online as well. And  
25 then they can -- and then if they -- it is provided

1 as a link from their own Web site so the consumer  
2 could see pictures of their product -- their current  
3 product that they have on their lot, and, you know,  
4 can actually -- can actually make an offer.

5 Q. Okay.

6 A. "Sales Training," "Parts Marketing," that  
7 would be an opportunity for dealers to actually  
8 purchase my services, to come and do -- come -- to  
9 come into the dealership on an individual basis to do  
10 the same thing for them as a consultant that I would  
11 do if I had been the manufacturer liaison.

12 Q. Okay.

13 A. "Dealer Supplies," the same -- same way,  
14 that -- that goes to an opportunity for dealers to  
15 purchase advertising, branded advertising materials,  
16 whether it be license plate frames, pens, banners,  
17 signs, that type of product. "Vendor Programs,"  
18 vendor programs --

19 Q. Can I just say, it's always funny to me  
20 when I get a new car how the dealer sort of sneaks  
21 those --

22 A. Yes.

23 Q. -- those little frames around my -- around  
24 my license plate.

25 A. Exactly.

1 Q. They should be paying me because I'm  
2 giving them some great free marketing here, you know.

3 A. Exactly, but, you know, it's all about  
4 getting your name out there and getting it seen.

5 Q. Yeah.

6 A. So the "Vendor Programs," that has to do  
7 with -- initially -- that really hasn't progressed  
8 very well for me. Initially, it was going to be an  
9 opportunity for -- for vendors to participate at  
10 DealerDashboard with the thought that I would have  
11 traffic from a lot of dealerships, and then they  
12 could communicate with -- with a particular vendor,  
13 and, of course, along the line, DealerDashboard  
14 received commission for that service.

15 Q. All right. And then --

16 A. And "Careers" would be an opportunity for  
17 any individual that would want to sell my services.  
18 Down below, you see "Add URL" --

19 Q. Well, actually, before we get back to  
20 that --

21 A. Sure.

22 Q. -- let's just -- so -- so this "Business 2  
23 Business," all of the little bullets under that,  
24 that's -- that's what you have to offer to the  
25 dealerships?

1           A.     That's -- that's the -- that would be the  
2 core.

3           Q.     Yep.

4           A.     Anything that they did, for example, if  
5 you look at the front page, it is a portal with  
6 links, which, by the way, was one of the first  
7 automotive specific portables -- portals --  
8 portables -- portals in the country, okay? So if --  
9 if someone were to click on training products, if a  
10 dealer were to click on training products, they would  
11 see different vendors in the automotive industry that  
12 provide training products for that industry specific.

13                 So the service to the dealership is still  
14 there by going to DealerDashboard. Some of those  
15 were revenue generating, some of those are an  
16 exchange -- link exchange.

17          Q.     Right.

18          A.     So they would -- you know, that particular  
19 site would promote DealerDashboard, I would promote  
20 them.

21          Q.     Right.

22          A.     So they're a link exchange. In order  
23 for -- for anyone to be on that, they have to submit  
24 their desire to be there. I have to approve it, and  
25 then it's -- then they're -- and then that's -- and

1 normally I try to vet most of those individuals, so  
2 that it's cleaner than just going out and --

3 Q. But the -- the services that are  
4 particular to -- so -- so there's a lot of  
5 information you provide that would be useful to both  
6 a consumer and a -- and a dealership, but the  
7 services that you can offer to the particular dealer,  
8 everything from the salvage training to the floorplan  
9 finance, to focus in on those, that's what we were  
10 talking about before, that you probably first started  
11 to offer those first sort of narrowly tailored  
12 services maybe in about 2001 or so?

13 A. I know in 1999. I offered the services  
14 prior to that with regards to consulting to the  
15 dealership with regards to their operations, but as  
16 far as DealerDashboard, I mean, those have been on --  
17 on the Web site since '99.

18 Q. Right. But -- but --

19 A. Web site development, initially when, you  
20 know, I created DealerDashboard, I offered Web site  
21 development for dealers that was -- you know, a lot  
22 of dealers didn't even have Web sites at that stage  
23 in the game, so I offered that and I offered, you  
24 know, my consulting services to go and do -- do the,  
25 you know, financial analysis.

1           And now I do that via the Internet, have  
2 that service available to go to a dealership. And,  
3 you know, I can sit at home, and I have software  
4 that -- that can actually go into their computer and  
5 see their financial statements and do analysis and  
6 present that information.

7           Q.    No, I think you're answering it. I  
8 think that back -- so back in '99 when you put this  
9 up, those services were part of what you offered, and  
10 then your first actual customer probably wasn't until  
11 a couple of years later?

12          A.    Uh-huh.

13          Q.    And you don't know the exact date?

14          A.    Uh-huh.

15          Q.    Okay. Excellent. All right. I think  
16 that that was very helpful with -- with understanding  
17 how this -- how this all works. And we're looking to  
18 get a new car, so I was sort of surfing around on  
19 this for personal reasons as well, so -- all right.

20                So let's talk now about your trademark  
21 application, which is really why we're -- we're here  
22 today. What were your reasons for wanting to adopt a  
23 trademark called DealerDashboard?

24          A.    Well, I wanted originality. And at that  
25 time, I think I've kind of explained, you know, the

1 way the automotive industry was, and it was -- and it  
2 was a shift in the paradigm. Dealers were going to  
3 be doing business quite differently than they had  
4 ever done in history, and I looked at, you know,  
5 how -- how can I portray the image that I want to  
6 create to a dealership, one I'm trying to accomplish.

7           So I took the -- you know, of course my  
8 primary target was the dealer, and I took the  
9 concept, well, you know, we're going to be looking at  
10 it out on a totally different future, and where does  
11 the consumer as well as the automobile dealership  
12 really see the road to success, and that's by looking  
13 over the dashboard of their automobile as they're  
14 traveling down from -- you know, point to point. So  
15 that was a concept I had in my mind, and that's when  
16 DealerDashboard ingeniously popped.

17           Q.    So you didn't consider any other marks?  
18 You thought of DealerDashboard and -- or were there  
19 other marks that you were toying with as well?

20           A.    At that point in time, I was doing a  
21 consulting project for a company called dealerTools.

22           Q.    Okay.

23           A.    And back -- back in the -- that day, most  
24 of your automobile Internet companies, your  
25 compensation was stock. So you would devote your

1 time and your energy marketing and you got stock. If  
2 you picked the right company, you did extremely well.

3           There were millionaires made with Autoweb,  
4 you know. The person who purchased Business.com, it  
5 was sold for 3.5 million. So, you know, I was -- I  
6 was on that -- in that arena, and dealerTools was not  
7 panning out.

8           And although I saw some things that --  
9 that could go but weren't -- weren't, I made the  
10 recommendations to that particular. They decided not  
11 to pursue those avenues. I decided I wanted to  
12 pursue them on my own, had to come up with a name. I  
13 had to come up with a domain name, and  
14 DealerDashboard popped in my mind.

15         Q. But, I mean, obviously you didn't coin the  
16 name -- the term "dealer," right?

17         A. I didn't coin the name "dealer."

18         Q. Correct.

19         A. I didn't coin the name "dashboard." I  
20 coined the name "DealerDashboard."

21         Q. Okay. What's your understanding of what  
22 the term "dealer" means?

23         A. Well, in my arena, in the automotive  
24 industry, a dealer is -- is someone who's in the  
25 marketing for automobiles, parts, service, sales.



1 Q. And in your arena, what's your meaning of  
2 the term "dashboard"?

3 A. Dashboard is -- is an instrument panel in  
4 an automobile below the glass designed for not only  
5 protection to the -- to the occupant, but also  
6 provides valuable instruments with regards to the  
7 performance of their automobile.

8 Q. And when you say "valuable instruments,"  
9 it's necessary information for the driver, right?

10 A. Correct.

11 Q. Okay.

12 A. Well, I don't know -- I don't know if it's  
13 necessary. There are a lot of people who ignore it.  
14 It's there if you choose --

15 Q. And they run out of gas.

16 A. -- to utilize it.

17 Q. Right. And they're on the side of the  
18 road.

19 A. Know how to interpret it.

20 Q. Right, exactly. Right. You are going  
21 over the speed limit, whether you choose to ignore  
22 that is your own call.

23 A. Right.

24 Q. All right. So -- so obviously the term  
25 "dashboard" is commonly used in the field of cars?

1           A.     When referring to an instrument panel.

2           Q.     Okay.  And since -- since the -- since  
3 dealerships began, the notion of car dealerships, the  
4 terms "dealer" and "dashboard" have been used and  
5 associated with -- with the car industry, right?

6           A.     You know, I think "dealer" has been  
7 associated.

8           Q.     Right.

9           A.     "Dashboard" has been associated.  The term  
10 "DealerDashboard," I think that is unique.

11          Q.     Okay.  When did you first use the  
12 DealerDashboard mark?

13          A.     I would say it was right around the time  
14 of my registering the domain name.  I think I  
15 provided you that document.  And off the top of my  
16 head, I think it was, like, October 5th of '99.

17          Q.     Okay.  So after you registered the domain  
18 name, you put the Web site up?

19          A.     Pretty -- pretty quick, yes, uh-huh.

20          Q.     So how did you -- is that how you first  
21 used the mark, the DealerDashboard mark?

22          A.     On the Web site, correct.

23          Q.     To the Web site, okay.  All right.  I  
24 think you've already -- we've already walked through  
25 the services.  Is there any other way that you use a

1 DealerDashboard mark that we didn't talk about so far  
2 today?

3 A. I don't think so.

4 Q. Okay.

5 A. Well, I provided you with -- you know,  
6 it's in -- it's on my printed material --

7 Q. Right.

8 A. -- things like that --

9 Q. Right.

10 A. -- but -- but it's basically selling those  
11 or marketing those services that we talked about, the  
12 consulting service.

13 Q. Right.

14 A. Okay.

15 Q. I'm not trying to --

16 A. Yeah. I'm just making --

17 Q. Right.

18 A. -- sure we're on the same page.

19 Q. We are.

20 A. Okay.

21 Q. And I'm not trying to trick you by not  
22 showing you the documents. I mean, there's just --

23 A. Yes.

24 Q. -- so many stacks. And if you say October  
25 5th, 1999 and it's really October 10th, 1999, it's

1 not a --

2 A. No.

3 Q. -- big deal. So just so you know, I'm not  
4 trying to trick you.

5 A. I just wanted to make sure that we're on  
6 the same page --

7 Q. Yes.

8 A. -- with regards to those services -- you  
9 know, I obviously used the DealerDashboard brand and  
10 logo to market my services.

11 Q. Right. I just wasn't sure if there was  
12 some other way that you were also using it --

13 A. No.

14 Q. -- that we haven't -- we haven't talked  
15 about, so --

16 A. I don't think so.

17 Q. Okay. Now, can you think or can you tell  
18 me who the first automotive dealer that engaged your  
19 services to provide managerial information regarding  
20 the sales and service and their sort of key -- I  
21 think you used the term "financial indicators" of how  
22 their dealership is performing?

23 A. Correct.

24 Q. Who --

25 A. My consulting services, the first would

1 have been what am I manufacturing, but with regards  
2 to the Dealer --

3 Q. No, DealerDashboard.

4 A. There has been none.

5 Q. There has been none?

6 A. Right, correct.

7 Q. Okay. So nobody has engaged you so far  
8 to --

9 A. That's correct.

10 Q. Okay. All right. I want to go into the  
11 actual trademark application, and it seems like there  
12 has been a lot of communication with you and the  
13 examining attorney.

14 A. Correct.

15 MS. FINGUERRA-DUCHARME: So before we get  
16 into that topic, let's just take a short break  
17 because I need to use the --

18 THE WITNESS: And if I could get a drink.

19 MS. FINGUERRA-DUCHARME: Absolutely.

20 THE WITNESS: Yeah, I'm getting dry.

21 MS. FINGUERRA-DUCHARME: And anytime you  
22 want to stop to go get a cup of coffee, use the  
23 bathroom, let us know.

24 (A recess was taken from 10:51 to 10:58.)

25 BY MS. FINGUERRA-DUCHARME:

1           Q.    All right.  So you said that you started  
2 to use the -- the mark and you created your Web site  
3 in '99, I think?

4           A.    Correct.

5           Q.    Why did you wait until 2003 to actually  
6 file the trademark application?

7           A.    Well, a couple things.  As DealerDashboard  
8 became well-known in the Internet automotive world,  
9 people started cloning.  People started trying to  
10 gain the ranking that DealerDashboard had.

11          Q.    When you say "cloning," what do you -- do  
12 you mean cloning of your services or cloning of the  
13 mark?

14          A.    Cloning of the mark, cloning of -- of  
15 services, actually cloning of trade dress in an  
16 effort to, I consider, infringe upon the business  
17 model and -- and mark.

18          Q.    All right.  You've said a lot in that two  
19 sentences, so let's -- let's just back up so I can  
20 understand what you mean by everything that you've  
21 said.

22          A.    Okay.

23          Q.    How are people cloning of the mark?

24          A.    Utilizing it to gain Web ranking under the  
25 term "DealerDashboard."

1           Q.     Okay.  So were they offering Web sites  
2 under DealerDashboard, or were they using your mark  
3 in their metatags?  Explain to me what they were  
4 doing.

5           A.     A little bit of both and -- and more.

6           Q.     Okay.

7           A.     All of it.  I mean, it was the Wild West  
8 in the -- in the Internet world.  And there wasn't  
9 any real threat until -- when did you say, 2003, when  
10 I originally filed?

11          Q.     Right, that's when you filed the  
12 application.

13          A.     There wasn't a real threat until -- I  
14 believe their name is Nowcom, and I think I provided  
15 you that case, okay.  They tried to duplicate the  
16 services under the same brand and filed for  
17 trademark.  At that point in time, I felt it  
18 imperative to defend the mark and register the mark  
19 for protection for future use.

20          Q.     Right.

21          A.     Okay.  When you're an entrepreneur, sole  
22 proprietor, you make business decisions based on  
23 sales, revenue, expenses.  I was not in a position to  
24 have the luxury to pay the filing fee, the  
25 registration fee, when I initially started the site.

1 Q. Okay.

2 A. I wasn't really prepared in 2003, but I  
3 had no alternative but to make that a priority and an  
4 expense.

5 Q. Okay.

6 A. To defend a mark, there -- in my  
7 opinion -- I'm not an attorney, but in my opinion, in  
8 what little bit of case history I've -- I've read,  
9 there is common-law marks that if it came down to the  
10 nitty-gritty, I could, you know, pursue under the --  
11 you know, the common-law trademark. So registration  
12 was not that vital to me until there was an actual  
13 threat on the mark itself.

14 Q. What was the name of this company that  
15 you --

16 A. I think it's called Nowcom.com.

17 Q. So besides the Nowcom.com, was there  
18 anybody else that was using the DealerDashboard.com  
19 mark -- well, DealerDashboard, I should say, without  
20 the .com?

21 A. I think you were correct in  
22 DealerDashboard mark, but they would use it in their  
23 metatags to gain patronage.

24 Q. Okay.

25 A. Okay. And would be -- and would be



1 offering competitive services based on that. Now, I  
2 didn't see until -- until, like, 2003, 2004, 2005,  
3 where individuals actually tried to use  
4 DealerDashboard as a mark in their own services.

5 Q. And who are those people that you saw?

6 A. There were several. Honda was one of  
7 them.

8 Q. It was several what?

9 A. There are -- there are several. Honda was  
10 one of them. BMW tried it, you know. So it has been  
11 a constant monitoring and sending cease-and-desist  
12 letters throughout the use of the mark. I have -- I  
13 have attempted to defend the mark from day one. Lots  
14 of times I've been successful. With Honda, I haven't  
15 been all that successful as yet.

16 Q. Okay. You also mentioned before about  
17 cloning of the trade dress, I think you had said.

18 A. Correct.

19 Q. What do you consider the trade dress?

20 A. Well, if you look at the -- if you look at  
21 the Web site --

22 Q. Yeah.

23 A. -- and I think I explained my marketing  
24 concept with regards to the dashboard, the view of  
25 the road, and the perception that DealerDashboard is

1 a future view of the automotive world.

2 Q. Okay.

3 A. So someone who came in and presented the  
4 same theme and the same product I would consider a  
5 trade dress infringement.

6 Q. Okay.

7 A. As you can see in '99, the Web site, the  
8 artistic creation of the Web site and the thing was,  
9 you know, copyrighted.

10 Q. What about this little trade -- trademark  
11 here?

12 A. Right.

13 Q. Have you sought registration of that?

14 A. Of that particular emblem?

15 Q. Let me just be clear for the record. I'm  
16 pointing on Exhibit 1, second page, the bottom of the  
17 page, there's a console with some gauges and it says,  
18 "DealerDashboard." It's a dashboard console with the  
19 term "DealerDashboard.com."

20 A. Okay. Have I tried to trademark that?  
21 No. That -- that is an artistic representation and I  
22 have that copyrighted. So as far as actually  
23 trademarking that particular logo --

24 Q. Yep.

25 A. -- I have not.

1 Q. Okay. Has anybody tried to copy or make  
2 anything similar to that logo?

3 A. Oh, there's -- you know, there's several  
4 people who have used the dash and -- in -- with  
5 competing services once I did it. For example, I  
6 can't think -- oh, Cobalt. Cobalt duplicated my  
7 dealer-to-dealer auction, uses the dash in their  
8 representation.

9 Q. Okay.

10 A. I don't have the bucks to pursue them. I  
11 have sent them cease-and-desist letters.

12 Q. Okay. Have you seen any other third-party  
13 use of the term "DealerDashboard"?

14 A. I think I explained --

15 Q. Besides the ones we've spoken about today.

16 A. There is always evolution of people that  
17 are attempting to -- to utilize the brand.

18 Q. Okay.

19 A. And I -- just this week I sent out  
20 cease-and-desist letters.

21 Q. Okay.

22 A. And I will provide those to you.

23 Q. Yes, that will be helpful. All right.  
24 Let me show you the first -- your initial, original  
25 trademark application. I'm going to mark this as

1 Dalton Exhibit 2.

2 MR. DAMERON: Thank you.

3 (Deposition Exhibit 2 was marked for  
4 identification.)

5 BY MS. FINGUERRA-DUCHARME:

6 Q. Do you recognize Exhibit 2?

7 A. Okay. I think the question was, do I  
8 recognize -- no, I don't recognize -- I've never seen  
9 this in this form. However, it appears to be, based  
10 on -- you know, we can take this representation -- it  
11 appears to be a printout of an online application for  
12 the original trademark.

13 So I'm assuming the representation that  
14 you're making to me is -- is taken off the -- this  
15 site here, which it indicates off the TEAS, and --  
16 and -- but I would say, since I submitted it  
17 electronically, this was presented as a -- as a Web  
18 site and I entered the information.

19 So I've never seen this as far as a  
20 printout. I've never printed it out myself. But,  
21 for the record, I would like to state that, based on  
22 this information, it has a date of 1/1, 1999, first  
23 use, so that would be the first use, which would  
24 indicate that the concept was prior to my registering  
25 of the trademark on 10/5, okay?

1 Q. Yeah. Then what was the filing date?

2 A. First use?

3 Q. No, the filing date of the application.

4 A. Oh, 12/11, 2003.

5 Q. And how did you describe your goods in --  
6 in this original application? It would be halfway  
7 down here, "Description."

8 MR. DAMERON: I think she is talking  
9 about --

10 A. Oh, "automotive related goods and  
11 services."

12 BY MS. FINGUERRA-DUCHARME:

13 Q. Do you understand what "Filing Basis"  
14 means on the application?

15 A. Oh, "Section 1(a)"?

16 Q. Yeah.

17 A. Not really, no.

18 Q. Okay.

19 A. But, you know, at the time I submitted the  
20 application, the first time I had ever applied for a  
21 trademark, I read what available -- information was  
22 available at -- at the -- at the site, kind of made  
23 an estimated guess of what I would fall under. But I  
24 think maybe that was not the correct category, and I  
25 think Evanko, I don't know if that was her first name

1 or her last name, I think quite possibly that that  
2 had been corrected, but I'm not sure what the filing  
3 basis was at that point in time.

4 Q. Okay. Well, if you look here, you'll see  
5 that on the first page you had 1(a)?

6 A. Right.

7 Q. Which means that it's use space. Do you  
8 know what use space means? That --

9 A. That it's currently in use.

10 Q. Right, okay. And then for the same  
11 description of goods, you had it as a 1(b), and  
12 that's intent to use?

13 A. Yeah.

14 Q. Now it's ringing a bell?

15 A. Yeah, I do recall doing that. And I  
16 think my interpretation of intent to use was that  
17 you're going to continue using it or something like  
18 that. So there was an error in that, and I think we  
19 came to the conclusion, with her advising and so  
20 forth, that we came up with that -- whatever  
21 currently is that. But there -- she did send  
22 me documentation that --

23 Q. We'll get to that.

24 A. Yeah.

25 Q. Like I said, I'm not trying to trick you.

1 I'm just going to walk piecemeal through.

2           A.     Yeah. This is the first time I had ever  
3 done that. And -- and as a layman, you know, going  
4 through government documents and so forth, you know,  
5 I did the best I could.

6           MS. FINGUERRA-DUCHARME: All right. Okay.

7           Off the record for just a second.

8           (A recess was taken from 11:12 to 11:13.)

9 BY MS. FINGUERRA-DUCHARME:

10          Q.     All right. So this was your original  
11 application. And you're correct, Patty Evanko was  
12 the examining attorney, and she did send you what's  
13 called an office action. She sent you -- she sent  
14 you one, and then she sent you a fax of the second  
15 one. They both are pretty much the same. I think  
16 she forgot to put some information in the first one,  
17 so I wanted to show you the second one that you sent  
18 the next day.

19                 This would be Dalton Exhibit 3, if you  
20 want to take a minute to look at that. And I can  
21 point you to the specific parts, if -- I mean, you  
22 want to feel comfortable reading this, but you don't  
23 need to read the whole -- the whole thing.

24                 (Deposition Exhibit 3 was marked for  
25 identification.)

1 A. Okay. Go ahead.

2 BY MS. FINGUERRA-DUCHARME:

3 Q. Okay. So you'll see on the first page --

4 A. This -- this looks -- okay. This is where  
5 she's identifying that there's -- there's someone  
6 currently using the mark or something?

7 Q. Somebody else has the application --

8 A. Yeah.

9 Q. -- which I think is what you had spoken  
10 about before.

11 A. Right.

12 Q. The other entity went and tried -- and now  
13 it's being cited against you?

14 A. Right.

15 Q. I'm sure you weren't happy when you saw  
16 that.

17 A. Right.

18 Q. Okay.

19 A. Right. But I knew I would prevail and  
20 did.

21 Q. All right. Okay.

22 A. Go ahead.

23 Q. All right. So in the first part she tells  
24 you about that other -- that other mark that she  
25 thought was close?



1           A.     Okay.  Now, this wasn't -- this -- I don't  
2 think that this was, like, our -- our immediately  
3 after filing communication.  I think there were  
4 several communications with her prior to -- to this,  
5 if I recall correctly, because it seemed like to me  
6 we -- we talked about description.

7           Q.     That's -- that's part of this, too.

8           A.     That is part of it?

9           Q.     Yep.

10          A.     Okay.

11          Q.     So if you look on page 2 of Exhibit 3,  
12 where it says "Identification of Goods"?

13          A.     Okay.

14          Q.     That's where she says that it's indefinite  
15 because it covers too many classes.

16          A.     Right.

17          Q.     And she gives some suggestions.

18          A.     Right.  And truthfully, this is legal  
19 jargon, don't really know what it meant, but tried to  
20 work the best way that I -- I think it was -- that  
21 was several months before we finally came up with an  
22 agreeable description.

23          Q.     Right.

24          A.     And I would basically communicate what --  
25 what I did and she would make recommendations.

1 Q. Right, okay.

2 A. I'm not certain. You know, for me to  
3 interpret what all this means, I don't know that I  
4 would be much benefit to you.

5 Q. No, I'm not asking you to do that. I just  
6 want to walk through the history of what happened  
7 with this trademark.

8 A. Okay.

9 Q. And then on the -- on the third page of  
10 Exhibit 3, you'll see where it says, "Basis for  
11 Filing"?

12 A. Okay.

13 Q. And that's where she points out to you  
14 that you can't have for the same goods and  
15 services --

16 A. Right.

17 Q. -- intent to use and use space. So she  
18 told you to choose one?

19 A. Right.

20 Q. And then she also talks about having to  
21 provide a specimen to support whatever you say --

22 A. Correct.

23 Q. -- once you start to use it?

24 A. Right.

25 Q. Okay.

1           A.     And I think what had -- I think maybe not  
2 this -- this time, but I think what had happened, I  
3 just provided them a link, and they needed the actual  
4 copy of it, so I had to print a copy of the Web site  
5 and then send it --

6           Q.     Right.

7           A.     -- send it to them as a specimen. Is that  
8 what we're talking about?

9           Q.     Yep.

10          A.     Yeah.

11          Q.     So as a response to this office action,  
12 you decided to make it a use space instead of an  
13 intent to use?

14          A.     Correct.

15          Q.     Okay. This will be -- this is a  
16 printout -- Exhibit 4 is a printout of your response  
17 to -- to the --

18          A.     To Exhibit 3?

19          Q.     Yeah, to the July -- Exhibit 3 was her  
20 July 30th, 2004 office action.

21          A.     Okay.

22          Q.     So Exhibit 4 is your response to that  
23 office action.

24          A.     Okay.

25          Q.     Do you --

1                   (Deposition Exhibit 4 was marked for  
2                   identification.)

3 BY MS. FINGUERRA-DUCHARME:

4           Q.     Do you see the submission date on the --  
5 on the bottom of the first page of Exhibit 4? Can  
6 you tell us what date you submitted this response?

7           A.     December 30th, 2004.

8           Q.     Yep, okay.

9           A.     And when was --

10          Q.     The other -- the office action was July  
11 30th, 2004. You generally have six months to  
12 respond.

13          A.     Okay. And is that within that six months?

14          Q.     Yep.

15          A.     Okay. I don't know why I waited six  
16 months. I don't know if there were -- I mean, we  
17 had -- we had e-mailed back and forth.

18          Q.     I think you waited because you were  
19 dealing with that other mark?

20          A.     Nowcom probably.

21          Q.     Okay. So if you look on page 2 of Exhibit  
22 4, this is where you went ahead and you made  
23 amendments to your application. If you want to take  
24 a moment to read just that first little section  
25 there. Can you tell me how you now describe your

1 goods and services? You see how it goes from that to  
2 that?

3 A. Okay. When you're saying "now," do you  
4 mean as of --

5 Q. As of this --

6 A. -- this particular date?

7 Q. Right. Now, as of -- in your office  
8 action response, which is Exhibit 4, can you tell me  
9 how it was that you changed the description of goods?

10 A. I don't really recall, but I think -- I  
11 think she wanted -- I think what it said -- what she  
12 said --

13 Q. You can just read from right here, if you  
14 want, even into the record.

15 A. I -- first, let me preface, okay, I have  
16 not read Exhibit 3, okay, so I'm basing my response  
17 from what I recall at that time. I believe Exhibit  
18 3, she said my description was too broad, she needed  
19 me to narrow it, okay. So I then narrowed it to, are  
20 you talking about "Class 035 for providing online  
21 management tools and information regarding  
22 automobiles for sale via the Internet, parts and  
23 accessories; and dealerships in the field of  
24 automobiles."

25 Q. Right.

1           A.     Okay.

2           Q.     So this -- that was your new description  
3 of goods that you submitted in Exhibit 4 --

4           A.     Right.

5           Q.     -- in response to the examining attorney's  
6 objection that it was too broad?

7           A.     Correct.

8           Q.     Okay.

9           A.     And that's how I -- that's how I felt I  
10 best described the services I offered that we had  
11 already discussed.

12          Q.     And you also changed the filing basis to  
13 limit it to now just 1(a), which is "Use in  
14 Commerce," right?

15          A.     Yeah. I believe she said you had to have  
16 one or the other. I was currently using, so I  
17 changed it to 1(a).

18          Q.     And what date do you say in that -- that  
19 paragraph, that Section 1(a) paragraph, what date do  
20 you claim first use?

21          A.     Okay. At that point in time, I -- I  
22 referred to -- off the top of my head, I -- what I  
23 did, I did a search of when I registered the domain  
24 name, put that as first in use. Prior to that, if  
25 you look at when it was saying 1/1, 1999 --

1 Q. Yeah, '99.

2 A. -- that's when I was developing the  
3 concept, still doing consulting for dealerTools, and  
4 it wasn't until I registered the mark that I actually  
5 put it in use.

6 Q. Okay. So the January 1, 1999 date was  
7 when you were conceiving of it?

8 A. Correct.

9 Q. And then --

10 A. Yeah, yes.

11 Q. And then the October 5th, 1999 date, that  
12 was the date that you registered the domain name?

13 A. The domain name, yeah.

14 Q. Okay.

15 A. Now, whether -- now, whether I --  
16 truthfully, whether I actually used the -- the  
17 dealerDashboard brand prior to actually registering  
18 it, identifying it, I can't really say, but I can say  
19 definitely when I registered the -- the trademark,  
20 because I was obviously researching that name and so  
21 forth before I registered to see if the name is  
22 available, to see if there was anything out there  
23 competing or -- or anything like that. So --

24 Q. When you said, though, registering a name,  
25 you mean registering a domain name?

1 A. Correct.

2 Q. Okay. As opposed to registering the  
3 trademark in the trademark office, which wasn't until  
4 2003, you're saying?

5 A. Well, common-law registry was when I put  
6 the Web site up, and it was registered at that time,  
7 which would have been -- and registering that with  
8 the domain, it would have been 10/5 of '99.

9 Q. I just want to make sure we understand.

10 A. Right.

11 Q. Because you're using some terms that can  
12 have different meanings --

13 A. Okay.

14 Q. -- so --

15 A. Yeah, right.

16 Q. And I appreciate that you're not a lawyer,  
17 so I don't -- I want to make sure that we are on the  
18 same page.

19 A. Yeah.

20 Q. So the date that you -- that you claim  
21 here as your first use in commerce, October 5th,  
22 1999, that's the date that you registered the domain  
23 name DealerDashboard.com?

24 A. Correct.

25 Q. Okay. And did you -- how long after you



1 registered the domain name do you think you actually  
2 put the Web site up?

3           A.     You know, I think a lot of the Web site  
4 was developed even before registering the domain  
5 name. The only way I could retrieve that information  
6 would have been at my first hosting company, and  
7 they've been sold out and I can't get any records for  
8 that, because I did try to get that. You know, I  
9 would say the day that I registered the domain name,  
10 it went live.

11           Q.     Okay.

12           A.     Because I had been developing it that  
13 entire period of -- since, you know, that entire  
14 year.

15           Q.     Right.

16           A.     Basically, I was in conflict with -- with  
17 the organization I was with at dealerTools, and  
18 basically I was, you know, well, if we don't get this  
19 straight, I'm going in competition with them. And so  
20 I was developing the concept, the Web site and  
21 everything. I had it already hosted, it just wasn't  
22 live to the public.

23           Q.     Okay.

24           A.     Make sense?

25           Q.     It does make sense.

1           A.     Okay.

2           Q.     What -- what did that Web site first look  
3 like on October 5th, '99?

4           A.     Okay.  What I'm going to have to do is --  
5 I thought this might come up, so what I did, I think  
6 I provided you --

7           Q.     I can show you the document --

8           A.     -- a link to Wayback.

9           Q.     Okay.  Yep.

10          A.     Okay.  And it had the various things.  So  
11 what I -- what I did, and I will give you these  
12 exhibits and -- and amend them to the exhibits you  
13 currently have, and what that will do will provide  
14 you how it looked.

15          Q.     Perfect, great.  We can mark this as  
16 Exhibit 5.  Did you bring copies or just one copy?

17          A.     Yes, I did bring copies.  I'm just trying  
18 to get me one --

19          Q.     Okay.

20          A.     -- and then give you one.

21          Q.     Perfect.

22          A.     If you want to look at those, and then you  
23 can decide how you want to mark them.

24          Q.     Great.

25          A.     I think -- I think all I did was give you

1 the link to Wayback and indicate that all of those  
2 would --

3 Q. Let's mark these each separately. So if  
4 you can give them to the court reporter so she can  
5 mark them for us, that would be great.

6 A. Okay.

7 (Deposition Exhibits 5 - 8 were marked for  
8 identification.)

9 MS. FINGUERRA-DUCHARME: Okay. We're  
10 ready? Oh, I'll give you a second.

11 MR. DAMERON: Learning something new.

12 MS. FINGUERRA-DUCHARME: I know.

13 BY MS. FINGUERRA-DUCHARME:

14 Q. Okay. All right. So Exhibit 5, it's --  
15 why don't you tell me what Exhibit 5 is, since you  
16 brought it with you.

17 A. Exhibit 5, according to the Wayback  
18 machine, this was the first date that they archived  
19 the site. Now, I don't think that this was the  
20 original site, but as it evolved, this is the closest  
21 to the original that I have currently --

22 Q. Okay.

23 A. -- available. And as you can see, a lot  
24 of -- you know, a lot of the -- when you print it  
25 out, a lot of the -- the things are not available

1 anymore for -- when they archived them.

2 Q. Right.

3 A. But you'll see a blank where it says,  
4 "Desktop Dealer Web Site Development," that was the  
5 metatag and the alt -- alttag. That was a picture of  
6 consumers, an automobile, and what I offered at that  
7 time was Web site development for dealers.

8 Q. Okay.

9 A. This was a new arena for dealers. Most of  
10 the dealers didn't have their own Web site at that  
11 time. This was before, you know, the tools now where  
12 you could use templates and all that stuff.

13 My -- my site is pure code, so it was  
14 developed HTML code prior to your tools that are  
15 available now. And that's what this is, kind of the  
16 primitive first use on -- on the Web site of an  
17 automotive site. But you could see from the -- from  
18 the start, I wanted to -- and the background would  
19 have been totally -- totally black.

20 And from the start, this dashboard kind of  
21 blended into the scene. And I wanted to create  
22 the -- the perception, as you looked at the screen,  
23 that you were actually sitting behind the dashboard  
24 and viewing the things available in the automotive  
25 world.

1           Q.    The -- this -- the buttons that are there  
2 on the left --

3           A.    Right.

4           Q.    -- those are the services at the time that  
5 were available?

6           A.    Correct.

7           Q.    Okay.  So it seems to me as if your  
8 company has evolved a lot through the years as -- in  
9 terms of the kind of information that you can provide  
10 to consumers and dealers?

11          A.    It has expanded with regards to -- to the  
12 amount of information available --

13          Q.    Yeah.

14          A.    -- because there has been more information  
15 available as time evolved.  But if you can look on --  
16 on there, you can see that the Automall, which would  
17 have been the dealer -- the opportunity for consumers  
18 to purchase automobiles directly from the dealer --

19          Q.    Yeah.

20          A.    -- the dealer-to-dealer auction, which is  
21 still available.  Now --

22          Q.    And that was where you just sold parts  
23 and --

24          A.    Well, the dealer-to-dealer auction would  
25 be like a wholesale auction from dealer to dealer.

1 Q. Yep.

2 A. And in that were management tools for a  
3 dealership that provided them financial information  
4 with regards to their operation. So in that software  
5 package, the dealership that participated in that  
6 subscription service had management tools available  
7 to them with regards to return on investment, aging  
8 of inventory, so on. And I think I provided you  
9 screenshots of that information. Now, that -- that  
10 was available from day one.

11 Q. Okay.

12 A. Okay. The Desktop -- the Dealer Desktop,  
13 that would have been a link to those consulting  
14 services that I presented to you with regards to  
15 reviewing the financial statements, providing tools  
16 to better manage them. The company, I did print that  
17 out, because I tried to get a concept of -- from day  
18 one how I came about developing DealerDashboard,  
19 so --

20 Q. Exhibit 6 is the company definition?

21 A. Right, okay. So -- and as you can see, as  
22 I previously testified, "Behind the  
23 wheel@dealerDashboard.com - We Deliver." And -- and  
24 my -- my thoughts behind that was the perception is  
25 sitting behind a wheel as you look at -- as you look

1 at the computer screen, and the fact that you had the  
2 mouse wheel in your hand.

3 Q. Yeah, okay. And then Exhibit 7, why don't  
4 you take a look at that as --

5 A. Exhibit 7 is a definition of "dashboard"  
6 from Dictionary.com, and that was based on the Random  
7 House Unabridged Dictionary.

8 Q. Okay. And what does -- what is the  
9 definition of a dashboard?

10 A. Reading from --

11 Q. Yes.

12 A. -- Exhibit 7, "a panel beneath the front  
13 window gauges and accessories for the use of the  
14 driver; instrument panel."

15 Q. Okay.

16 A. "A board or panel at the front of an open  
17 carriage or the like to protect from mud or dirt cast  
18 up by the hoofs of the animals drawing the  
19 carriage" --

20 Q. Okay.

21 A. -- is what it should say, but it doesn't  
22 look like I printed it too well.

23 Q. Exhibit -- you would agree with the  
24 definition, at least in the definition number 1 for  
25 dashboard, that's accurate?

1 A. I would, yes.

2 Q. Okay. Great.

3 A. And -- and I might add that my view of the  
4 front window when developing the unique term  
5 "DealerDashboard" was the front window would be the  
6 desktop monitor that you were viewing.

7 Q. Okay. I'll let you tell me what Exhibit 8  
8 is, just --

9 A. Exhibit 8 is the definition of "honda."

10 Q. All right. Well, thank you for bringing  
11 that. And when you filed all of your responses, did  
12 you understand the "Declaration Signature," the  
13 paragraph that you were signing to? If you want to  
14 take a look at that, we are back on Exhibit 4.

15 A. That that was true, to the best of my  
16 knowledge and so forth; is that what you're saying?

17 Q. Yep.

18 A. All right.

19 Q. Okay. If you want to take a moment to --  
20 just to look at the last two lines of the  
21 "Declaration Signature."

22 A. It looks like the last two lines are  
23 fairly long. Let's see.

24 Q. If you go with -- from the semicolon,  
25 "that if the original application was" -- well,



1 actually, that -- starting from the -- from the  
2 comma, "that all statements in the original  
3 application and this submission."

4       A.     That all statements "made on information  
5 and belief are believed to be true"; is that what  
6 you're asking me?

7       Q.     And the line --

8       A.     Right above it?

9       Q.     -- above it, "that all statements in the  
10 original application and this submission made of the  
11 declaration signer's knowledge are true"?

12      A.     Yes.

13      Q.     And then, "and all statements in the  
14 original application and this submission made on  
15 information and belief are believed to be true." And  
16 then is this your signature below that statement?

17      A.     It's my electronic signature.

18      Q.     Right. And you were the one who filed  
19 this -- this response?

20      A.     Correct.

21      Q.     Okay. All right. Now, with that -- I  
22 believe how this happened, according to what I was  
23 able to piece together from the PTO Web site, with  
24 your response, you also submitted information --  
25 additional information and specimens, and you

1 resubmitted sort of the -- her office action.

2 MS. FINGUERRA-DUCHARME: So if we can mark  
3 that as Exhibit 9.

4 (Deposition Exhibit 9 was marked for  
5 identification.)

6 BY MS. FINGUERRA-DUCHARME:

7 Q. The first few pages appear to be --

8 A. So it's your -- it's your representation  
9 that I resubmitted this pack to the -- Evanka,  
10 Ms. Evanka?

11 Q. Right. That this was submitted in further  
12 support of your response to her July office action?

13 A. Was there a request other than -- other  
14 than what you've shown me so far that I provide  
15 additional information?

16 Q. I think that you needed to -- that you  
17 tried to provide specimens because she had asked for  
18 more specimens?

19 A. In that same --

20 Q. Right.

21 A. Okay.

22 Q. So if you can go eight pages deep of  
23 Exhibit 9, tell me what this --

24 A. Does it have a number on the page?

25 Q. It looks like this.

1           A.     Okay.  So that's an -- that's an e-mail --  
2 looks like an e-mail, okay.

3           Q.     Do you know what this is?

4           A.     Okay.  This is -- looks like to me.

5           Q.     All right.

6           A.     Okay.  And I think I indicated that we had  
7 e-mailed each other back and forth.  So this looks  
8 like from Ms. Evanko -- or it may not have been from  
9 her, it may have been from the patent -- or trademark  
10 office to me.

11          Q.     It's acknowledging receipt of your  
12 response, right?

13          A.     Oh, okay.  So it's an automatic --

14          Q.     Right.

15          A.     It's an automatic --

16          Q.     Right.

17          A.     -- response, okay.

18          Q.     You know, one thing that --

19          A.     So I must have submitted something  
20 electronically to them.

21          Q.     Right.  That office action response that  
22 we --

23          A.     Okay.

24          Q.     -- looked at in Exhibit 4.

25          A.     All right.

1           Q.     Okay. One thing I didn't ask is when you  
2 -- you can -- and you can look at the page that we're  
3 looking at now because this is just a copy of your  
4 office action response in just a different format.  
5 But when you put in your new -- your new description  
6 of goods, in the second line there's a semicolon, and  
7 it says, "and dealerships in the field of  
8 automobiles."

9           A.     Uh-huh.

10          Q.     What -- what did that mean?

11          A.     It meant everything we had -- I've already  
12 testified to. It meant providing dealerships those  
13 services we've already discussed.

14          Q.     Okay. It doesn't mean that you had a  
15 dealership in the field of automobiles?

16          A.     Doesn't mean that I had a dealership?

17          Q.     Right.

18          A.     Is that what you mean?

19          Q.     Right.

20          A.     Correct. It meant that I was providing  
21 dealerships those tools --

22          Q.     Right, okay.

23          A.     -- as best as a layman can describe them.

24          Q.     Okay. So on your -- tell me what the next  
25 page is of Exhibit 9.

1           A.     Oh, I think -- okay. This is -- okay.

2 This is a Whois database. Whois database shows the  
3 registrant of a domain name. They asked me for a  
4 first use date.

5           Q.     Yep.

6           A.     At that point in time, the knowledge that  
7 I had in my head -- well, I know I first used it when  
8 I registered the domain name, so I did a Whois. I  
9 think they wanted -- maybe they wanted evidence  
10 with --

11          Q.     Yep.

12          A.     -- regard to the first use date.

13          Q.     Yep.

14          A.     So I provided this as the date that I  
15 registered the domain name as the date first in  
16 use --

17          Q.     Okay.

18          A.     -- date, and --

19          Q.     The next page --

20          A.     -- that I used the Wayback machine to  
21 demonstrate the evolution of this site.

22          Q.     Okay. And what is the next page here in  
23 Exhibit 9?

24          A.     Okay. That would be -- that would be what  
25 we had marked as Exhibit 5, but with the background

1 and the -- the rest of the graphics still available  
2 to it. So remember I told you there was some  
3 automobiles, and then if you look over there, like  
4 a -- it's like a book that listed different -- I  
5 don't have --

6 Q. Oh, I see, yeah.

7 A. Okay. That -- that's what -- that is that  
8 Exhibit 5.

9 Q. Okay. And it seems like the buttons  
10 are -- are in a different place, but where it  
11 says "D2D Auction," that's underneath your  
12 dashboard?

13 A. Okay. Well, then, that -- that would have  
14 been a predecessor to Exhibit 5.

15 Q. Okay.

16 A. Okay.

17 Q. And is that where you would find the  
18 dealership -- well, what would you find when you  
19 clicked onto "D2D Auction"?

20 A. You would go to the dealer-to-dealer  
21 auction explanation description page, so you could  
22 actually subscribe online to those services. And it  
23 explained -- I think I provided you screenshots of  
24 that. It explains the different return-on-investment  
25 tools that are available --

1 Q. Okay.

2 A. -- these inventory AG tools that are  
3 available.

4 Q. So that stuff was available?

5 A. Exactly.

6 Q. And the next page of Exhibit 9? So this  
7 is the -- you called it the "Current Evolved Use," so  
8 this is your current Web site?

9 A. Yeah, that must have been -- at that  
10 particular date, that must have been like you  
11 provided us --

12 Q. Yep.

13 A. -- on that particular date the screenshot  
14 of the Web site.

15 Q. Okay. Perfect.

16 A. I think she must have asked how it was  
17 originally used and how it's currently used maybe.  
18 There had to have been some reason why I would have  
19 shown -- I don't know, because I, you know, haven't  
20 read it, but that's -- that's my assumption.

21 MS. FINGUERRA-DUCHARME: Okay. Here is  
22 another office action. If we can mark this --  
23 sorry --

24 MR. DAMERON: Thank you.

25 MS. FINGUERRA-DUCHARME: -- as Exhibit 10.

1                   (Deposition Exhibit 10 was marked for  
2                   identification.)

3 BY MS. FINGUERRA-DUCHARME:

4           Q.     Do you know what Exhibit 10 is?

5           A.     Okay. I don't know what it is, but I --  
6 you know, based on the representation here, that it's  
7 a notice of suspending the process of -- of the  
8 trademark. I'm assuming that's because of the  
9 conflict with Nowcom.com attempting to exploit my  
10 mark.

11          Q.     And what was the date that this was sent?  
12 It's on the first page.

13          A.     1/22 of '05.

14          Q.     Yep, okay. And you're correct that the  
15 first page she does suspend it, but then she -- on  
16 the second page, she talks about how there's still a  
17 few issues with the application itself, right?

18          A.     Correct. I think she, if I recall,  
19 claimed my -- my explanation of the services were  
20 still generic -- somewhat generic, and wanted me to  
21 narrow -- narrow the -- the verbiage --

22          Q.     Right, okay.

23          A.     -- if I recall correctly.

24          Q.     If you look at paragraph 1, you can see  
25 what her objections were, and the wording --



1           A.    If the wording is not -- yeah.  
2           Q.    Because it's too broad?  
3           A.    Yeah.  Yeah, exactly.  
4           Q.    Okay.  And then --  
5           A.    Go ahead.  
6           Q.    No, you --  
7           A.    The -- the current wording as stands,  
8 which he finally approved, was recommended by her  
9 after explaining to her what I did, okay.  
10          Q.    Okay.  And then she also said that -- that  
11 you had included specimens to support your use --  
12          A.    Well, I know she -- I didn't submit a  
13 declaration, I think.  
14          Q.    Right.  
15          A.    So I had to do that, which she provided --  
16 I guess this provides a sample --  
17          Q.    Right.  
18          A.    -- declaration.  So then I think I had to  
19 submit everything again with a signed dec.  
20          Q.    Right.  
21          A.    Or I just had to provide the dec, I don't  
22 recall.  
23          Q.    Okay.  Yeah, here you go.  That will help  
24 you remember.  
25          A.    Okay.  At that point in time --

1 MS. FINGUERRA-DUCHARME: Let's mark this  
2 as Exhibit 11.

3 (Deposition Exhibit 11 was marked for  
4 identification.)

5 A. With regards to the dec page, I believe  
6 that was done online, and I think she said that that  
7 wasn't acceptable, that I had to mail it to her --  
8 back to her or something like that.

9 BY MS. FINGUERRA-DUCHARME:

10 Q. Okay.

11 A. Because if I'm not mistaken, there was  
12 a -- there was a screen where you did that online,  
13 and I'm fairly certain I did that.

14 Q. Do you recognize Exhibit 11?

15 A. Correct. Yes, I -- well, I have never  
16 seen this, but, I mean, it looks like the -- she must  
17 have requested me to amend. And after she made the  
18 recommendation of this wording, and then I submitted  
19 it, and I think she approved it from this point  
20 forward.

21 Q. Okay. When did you submit this office  
22 action response reflected in Exhibit 11? It's at the  
23 bottom of the first page.

24 A. "Signature Date, 02/14/2006."

25 Q. Okay. And when did you say that you began

1 using the mark for -- on the goods that are described  
2 here, which is "First Use Anywhere Date"?

3 A. 10/5/99.

4 Q. Okay. And your new description included  
5 "providing automotive dealerships managerial  
6 information concerning their Sales, Service, and  
7 Parts departments key financial indicators of how  
8 their dealership is performing via the Internet,"  
9 right?

10 A. Uh-huh.

11 Q. And you were -- you were doing that as of  
12 October 5th of '99?

13 A. Correct.

14 Q. Okay. But you didn't -- nobody was  
15 actually signed up to use those services at that  
16 time?

17 A. Correct.

18 Q. Okay.

19 A. They were available.

20 Q. They were available?

21 A. Services were available.

22 Q. Okay. What does "key financial  
23 indicators" mean? I think I understand based on what  
24 we've been talking about, but --

25 A. Well, for example, in a dealer-to-dealer

1 wholesale auction, the dealer will purchase a vehicle  
2 and then sell that vehicle. Some of the key  
3 financial indicators of that vehicle, what his return  
4 on investment is, so there are various factors that  
5 you look at with regard to each department.

6           Now, with regards to an automobile and  
7 what is provided on -- on the Web site at that time  
8 would be how much did the vehicle cost? How much did  
9 you invest in preparing that vehicle for sale? How  
10 much did you invest in repairing that vehicle to make  
11 it roadworthy and safe for a consumer? What's the  
12 cost of the titling? What's the cost of your  
13 financing to floorplan that vehicle, your interest  
14 costs and so forth? What did you sell the vehicle  
15 at? What is your return on -- on investment? So  
16 those are the key financial indicators for that  
17 particular automobile.

18           Q.    Okay. And this is your electronic  
19 signature on the "Response to Office Action," right?

20           A.    Correct.

21           Q.    Okay. I would have to say the amount of  
22 correspondence is unbelievable.

23                   Okay. Let's mark this next office action.

24           A.    Well, that's what happens when a  
25 layman --

1 Q. Yeah, Exhibit 12.

2 A. -- does things on their own.

3 Q. All right. Now, you saved the money but  
4 you did not save the time?

5 A. Correct.

6 (Deposition Exhibit 12 was marked for  
7 identification.)

8 BY MS. FINGUERRA-DUCHARME:

9 Q. Okay. What is Exhibit 12? Take a moment  
10 to look at it.

11 A. This is where they accepted my submission.

12 Q. And they required you to submit a  
13 declaration, right?

14 A. I sent it, yeah.

15 Q. It says -- why don't you look at the third  
16 paragraph on the second page of Exhibit 12 --

17 A. I think --

18 Q. -- the second --

19 A. I don't think -- I think this is probably  
20 a form -- form letter. I don't think they required  
21 me to have additional because this -- this has to do  
22 with the specimen.

23 Q. Right.

24 A. Had already declared on a specimen as far  
25 as the verbiage.

1           Q.     Right.  But with it, she says, "However,  
2 the requirement that the applicant submit a  
3 declaration attesting to the use of the substitute  
4 specimen in use in commerce at least as early as the  
5 filing date of the application is maintained"?

6           A.     Yeah, that has to do with the specimen.

7           Q.     Right.

8           A.     Not -- not the -- not the usage verbiage,  
9 so there was no change in that.

10          Q.     But she was requiring you to submit a  
11 declaration that attests that that specimen was in  
12 use at the date of the filing of the application,  
13 right?  Why don't you read --

14          A.     I think you need to define "specimen."  
15 Because the specimen, as I interpret it, was the  
16 representation of DealerDashboard in the -- in a  
17 block form, okay, that's the specimen as a trademark.

18          Q.     The specimen is -- is the evidence that  
19 you put forth to show that you're actually using it  
20 in commerce.  Which, if you want to go back to  
21 Exhibit 9, I believe that these were your substituted  
22 specimens.  Remember, we -- we went through these  
23 before?

24          A.     Right.  And there was a dec that went with  
25 that.

1 Q. Right.

2 A. Okay.

3 Q. And it seems that he or she wanted you to  
4 submit another declaration that says that these  
5 substituted specimens were in use at the time of the  
6 application filing?

7 A. That's not the way I interpreted it and  
8 that's not the way that this was presented. This --  
9 this is the same form -- form -- it looks like a form  
10 letter of -- of, you know, any type of action from  
11 the office, and this -- this basically -- that has  
12 been accepted and made of record.

13 Now, if there was -- if there was a  
14 requirement for an additional declaration, then this  
15 verbiage would not be accurate. The identification  
16 of services has been accepted and made of record. So  
17 if there was any other requirement before that could  
18 have been accepted or made of record that there would  
19 be required a declaration, that statement would be  
20 false.

21 Q. Well, let me show you -- we'll mark this  
22 as Exhibit 13 and then you can tell me what this  
23 refers to then.

24 (Deposition Exhibit 13 was marked for  
25 identification.)

1           A.     Evidently I did then. I don't recall it,  
2 but apparently I did. Apparently I complied in the  
3 request.

4 BY MS. FINGUERRA-DUCHARME:

5           Q.     Okay. So this is -- to be clear, the --  
6 Exhibit 13 is a -- is a declaration by you saying,  
7 "The substitute specimen was in use in commerce at  
8 least as early as the filing date of the  
9 application," right?

10          A.     The amended application --

11          Q.     Right.

12          A.     -- which was 10/5 --

13          Q.     Right.

14          A.     -- first in use because the original  
15 filing had the two different usage codes. So as of  
16 10/5/99 --

17          Q.     Okay. So let's --

18          A.     -- "hereby warned that" -- was "in  
19 commerce at least as early as the filing date of the  
20 application," okay. My interpretation of this would  
21 have been the amended application.

22          Q.     Okay. So when you -- when you filed your  
23 first application --

24          A.     We'll use basis 1(a), 1(b). I was told it  
25 had to be one or the other. The amended application



1 was amended to a first in use of 10/5/99, and then  
2 this declaration would have been accurate based on  
3 that.

4 Q. Okay.

5 A. That's the way I interpreted this.

6 Q. Okay.

7 A. Are we on the same page?

8 Q. Yes, absolutely.

9 A. Okay.

10 Q. I don't know if you want to take another  
11 break, or are you good to keep going?

12 A. I wouldn't mind stretching my legs, if you  
13 don't mind.

14 Q. Okay. That's because it's a good -- it's  
15 a good time to stop for a few minutes.

16 A. Great.

17 (A recess was taken from 11:58 to 12:06.)

18 MS. FINGUERRA-DUCHARME: I am going to  
19 mark your answer.

20 (Deposition Exhibit 14 was marked for  
21 identification.)

22 BY MS. FINGUERRA-DUCHARME:

23 Q. Okay. Do you recognize Exhibit 14?

24 A. Oh, okay. This is -- this was, I'm  
25 assuming, the filing of my answer to Honda Motors'

1 opposition to the registration of DealerDashboard.

2 Q. Okay. Can you turn to page 5 of Exhibit  
3 14?

4 A. Yeah.

5 Q. Do you want to take a moment to read that  
6 first paragraph?

7 A. At the top of page 5, where it starts,  
8 "The applicant"?

9 Q. Yep.

10 A. I would prefer to see some exhibits. I  
11 don't see the exhibits attached, but --

12 Q. Okay. I wanted to ask you about the first  
13 sentence.

14 A. Uh-huh.

15 Q. What's your basis to your statement that  
16 "applicant has invested extensive time and resources  
17 building the non-generic brand DealerDashboard as a  
18 source identifier"?

19 A. Uh-huh.

20 Q. What's the basis for that statement?

21 A. That -- that I have invested extensive  
22 time and resources?

23 Q. Right.

24 A. Just the writing of the code, the Web  
25 site, is extensive time and resources.

1 Q. But how about building it as a brand?

2 A. As a brand? That is building it as a  
3 brand to -- to identify it on the Web --

4 Q. Okay.

5 A. -- as a brand.

6 Q. Okay.

7 A. So the time and resources also involved  
8 making sure that that brand remained in the number  
9 one spot, and that was defending the brand.

10 Q. Okay. When you say "number one spot,"  
11 what are you referring to?

12 A. If you go to a search engine, any major  
13 search engine, and type in either DealerDashboard,  
14 without a space, or Dealer, space, Dashboard, you  
15 will find DealerDashboard.com as the number one  
16 ranking spot in that search engine.

17 Q. Okay. We'll get into that actually in a  
18 little bit. We'll go over how you -- how it is that  
19 you're able to try to secure that -- that spot. But  
20 do you have -- other than searches through search  
21 engines, do you have any other evidence that -- to  
22 support your statement that DealerDashboard  
23 identifies one source?

24 A. I don't think I understand your question,  
25 ma'am.

1           Q.    Okay.  You said in your answer that  
2 DealerDashboard is a source identifier?

3           A.    Right.

4           Q.    And the source it identifies is you?

5           A.    Correct.

6           Q.    So what I would like to know is, what  
7 evidence do you have that supports the statement that  
8 the term "DealerDashboard" identifies you as the soul  
9 source?

10          A.    Okay.  Search engine -- search engine  
11 marketing is a very lucrative field.  To maintain the  
12 number one spot on any term is a very valuable asset,  
13 okay?  Now, secondly, the independent company,  
14 Ranking.com, ranks Web sites, and this -- what I have  
15 explained verbally and I think with the exhibit it  
16 would demonstrate their -- their independent  
17 interpretation of the value in ranking of  
18 DealerDashboard.

19          Q.    Okay.  And we will get into both the  
20 search engines and Ranking.com in just a moment.  So  
21 you don't have any other evidence that shows that  
22 consumers associate your services with  
23 DealerDashboard other than the search engine results  
24 and Ranking.com?

25          A.    I don't think I said that.

1 Q. Okay. So what --

2 A. I think there -- it's very clear, whenever  
3 anyone attempts to duplicate your efforts, you're  
4 perceived as being a valuable asset. And -- and so  
5 the evidence I would have that the DealerDashboard  
6 brand has gained recognition is the fact that people  
7 try to emulate, use DealerDashboard in their -- in  
8 their metatags to direct traffic to them, so -- and  
9 the evidence is clear in the search engines.

10 Q. Okay.

11 A. And let me -- let me preface that, okay?  
12 DealerDashboard is marketed primarily on the Web. So  
13 the best indicator is, if someone were searching for  
14 DealerDashboard, who are they going to see? And the  
15 number one spot is very critical.

16 Q. Okay. Who were these other entities that  
17 you say have tried to direct traffic to them by using  
18 DealerDashboard?

19 A. Nowcom.com was one of them --

20 Q. Okay.

21 A. -- to prevail in the trademark, which you  
22 have the -- in the opposition to their trademark, you  
23 have their -- their -- BMW attempted.

24 Q. And what -- can you tell me about BMW?

25 What did they do?

1           A.     They branded their -- their dealer  
2 interface as DealerDashboard.

3           Q.     Okay.  So that's -- that's different than  
4 any evidence that shows that a consumer associates  
5 you with DealerDashboard.  That's what I'm looking  
6 for.

7           A.     Well, isn't a dealer a consumer?  My -- my  
8 interpretation of a consumer would -- especially  
9 within the automotive industry, would be any dealer,  
10 manufacturer, parts supplier, consumer who purchases  
11 those products; those are my -- those are the markets  
12 that DealerDashboard is aimed at.  Those are the --  
13 those are the markets where DealerDashboard has a  
14 desire to protect its image, its brand.

15          Q.     Well, I'm trying to find -- I'm trying to  
16 understand, though, other than Ranking.com and -- and  
17 the search engines, what evidence that you have that  
18 shows that consumers, when they think of Dealer --  
19 when they hear the term "DealerDashboard," they think  
20 of your Web site?

21          A.     Well, you know, you're asking me to  
22 speculate.

23          Q.     No, I'm not asking you to speculate.  I'm  
24 asking you, do you have any market data research?

25          A.     I think I've indicated in the -- in the

1 interrogatories here, I have not done any  
2 independent. The marketing -- the marketing that I  
3 provided was an independent Ranking.com, who has --  
4 who has ranked the site based on the industry and all  
5 Web sites.

6 Q. Okay.

7 A. Okay. And we're in the top million.

8 Q. Now --

9 A. We're actually in the top half million  
10 sites.

11 Q. Now, has your Web site ever been reviewed  
12 by Consumer Reports?

13 A. No.

14 Q. Has your Web site ever been mentioned in  
15 Consumer Reports?

16 A. Not that I -- not to my knowledge.

17 Q. Has your Web site ever been reviewed in  
18 any national publication?

19 A. Not to my knowledge.

20 Q. Has it ever been mentioned in a national  
21 publication?

22 A. My particular Web site?

23 Q. Yes, DealerDashboard.

24 A. A particular -- there have been press  
25 releases with regards to DealerDashboard, so, I mean,

1 those have been published and those are available on  
2 the Web.

3 Q. Okay.

4 A. But as far as, like, has somebody came to  
5 me and reviewed and say, hey, you're really  
6 fantastic, DealerDashboard, you know, let me do an  
7 article on you?

8 Q. Right.

9 A. No.

10 Q. Okay. Can you provide me with the press  
11 releases? I'm not sure if they've already been  
12 produced.

13 A. I think you have already been provided  
14 with them.

15 Q. Okay. So they're in my stack?

16 A. Uh-huh.

17 Q. Has -- has your Web site ever been  
18 reviewed in an automotive trade journal?

19 A. No.

20 Q. Has it ever been mentioned in an  
21 automotive trade journal?

22 A. Not -- not to my knowledge.

23 Q. Okay. Do you promote your services at  
24 dealer trade shows?

25 A. I promoted at one dealer trade show.



1 Q. When was that?

2 A. And you were provided that information.

3 Well, actually, I didn't present it at the trade  
4 show. I -- I provided items that had the brand  
5 DealerDashboard as giveaway gifts as a promotion, and  
6 that was a Corvette club in Michigan. And in the  
7 interrogatories, I provided that information.

8 Q. Okay.

9 A. Exact date I didn't have.

10 Q. You mentioned press releases before, but  
11 has your Web site received any unsolicited media  
12 attention?

13 A. Unsolicited media attention. First, could  
14 I speak to my attorney, please?

15 Q. Sure.

16 (Attorney-client discussion.)

17 MR. DAMERON: I'll object for relevance,  
18 but you can go ahead and answer.

19 THE WITNESS: Now, could you repeat the  
20 question for me, please?

21 MS. FINGUERRA-DUCHARME: Will you read it  
22 back?

23 (The record was read.)

24 A. No, that I'm aware of.

25 BY MS. FINGUERRA-DUCHARME:

1 Q. Do you advertise your Web site on the  
2 Internet?

3 A. You mean do I pay for advertising?

4 Q. Yes.

5 A. Have I paid for advertising? I don't  
6 recall if I've paid. Do I advertise? I do advertise  
7 through reciprocal links, which would be in-kind  
8 donation for, I provide you a link, you provide me a  
9 link.

10 Q. And why don't you explain that -- explain  
11 that more. How many places -- how many Web sites are  
12 out there do you think -- and here you can give me an  
13 approximation -- that you have a reciprocal  
14 relationship? So I'll go -- I'll be -- I'll be on  
15 another Web site and I'll see a link to  
16 DealerDashboard.com?

17 A. Okay. Well, again, object to relevancy,  
18 but if you go to Ranking.com, on that document, it  
19 also has how many links there are to your site.

20 Q. Yeah.

21 A. And those vary, so I would refer to that  
22 document because I didn't -- I didn't keep track of  
23 it.

24 Q. Okay.

25 A. But, I mean, I probably have 650 requests

1 right now, in my -- in my query to review with  
2 regards to a request for a link or a request to be  
3 posted on DealerDashboard, so I would review that. A  
4 lot of it's spam, but those that are -- that are --  
5 let me say this. Any major link database in the  
6 automotive industry, you will find DealerDashboard --

7 Q. Okay.

8 A. -- whether that be automotive.com. A lot  
9 of them have disappeared over time, but at one time,  
10 any major automotive site that provided a link, you  
11 would find DealerDashboard.com.

12 Q. All right. Let's -- let's talk a bit  
13 about Ranking.com. What is Ranking.com?

14 A. Ranking.com is an independent ranking  
15 service for Web sites, and they -- and they have  
16 ranked DealerDashboard.

17 Q. Okay. Do you have an affiliation with  
18 Ranking.com?

19 A. As far as some type of an affiliate  
20 agreement or something like that? No, I think -- I  
21 know I have signed up for them to send their  
22 information of how I rank, and those rankings are  
23 posted on my Web site. Now, whether you consider  
24 that an affiliation arrangement or not, I don't know.

25 Q. Do you have to pay them any kind of a fee?

1 A. No.

2 Q. Okay. How did you learn that  
3 DealerDashboard.com was listed on Ranking.com?

4 A. You know, I don't know. I think maybe --  
5 I think maybe a search and -- it popped up in a  
6 search in one of my regular routines to defend the  
7 brand.

8 Q. Okay.

9 A. And probably visited the site, saw that  
10 they had ranked, and then asked them to send me --  
11 you know, what -- I -- I would have to go through the  
12 site currently.

13 Q. Okay.

14 A. But I've been -- you know, have received  
15 -- I've received ranking monthly from them and it  
16 changes.

17 Q. Okay. In your answer, which was Exhibit  
18 14, you said that you've received recognition by  
19 Ranking "as being within the top 25% of all the top  
20 1,000,000 websites"?

21 A. Right.

22 Q. What do you base that statement upon?

23 A. Ranking.com and the document. Do you have  
24 the exhibit?

25 Q. I do. I was going to turn to it in a

1 second, but we can turn to it certainly.

2           A.     That was my interpretation of the -- of  
3 the information they provided me.

4           Q.     Okay. This is 15. Why don't you identify  
5 for the record what Exhibit 15 is.

6                     (Deposition Exhibit 15 was marked for  
7 identification.)

8 BY MS. FINGUERRA-DUCHARME:

9           Q.     Will you identify for the record what the  
10 document is --

11          A.     Oh.

12          Q.     -- or the package of documents are?

13          A.     This looks like exhibits filed along with  
14 the answer.

15          Q.     Okay. So you were -- I had asked you the  
16 question, what do you base your statement that  
17 DealerDashboard is ranked in the top 25 percent of  
18 the top -- of all the top 1 million Web sites?

19          A.     If you look at Exhibit E, dated 1/6, 2007,  
20 of your Deposition Exhibit 15, E(1), the first line  
21 is, "Traffic ranking among all sites." 11/15/2006,  
22 you'll see I am ranked 223,928, okay? That would  
23 fall within the top 25 percentile of the top 1  
24 million sites, okay? They only rank the top 1  
25 million sites, okay?

1           So utilizing that figure right there of  
2 all sites, all of the top 1 Internet -- 1 million  
3 Internet sites, they have ranked DealerDashboard.com  
4 within the top 25 percent. Does that clarify for  
5 you?

6           Q.    Yep.

7           A.    Okay. And if you'll --

8           Q.    But if you look -- if you look on -- on  
9 that page where DealerDashboard.com appears, you'll  
10 see where it says, "Web Rank," you're -- you're  
11 ranked 223,000, but if you look down to rankings 42,  
12 43, 44, they're over -- they're -- they're ranked  
13 over a million?

14          A.    Where -- I'm sorry? Okay. You're talking  
15 about --

16               MR. DAMERON: E(4), it looks like.

17          A.    You're talking about E(3)?

18 BY MS. FINGUERRA-DUCHARME:

19          Q.    E(4).

20          A.    E(3) and E(4), okay. So you're -- now,  
21 okay. That -- okay. You're saying those particular  
22 sites --

23          Q.    Right.

24          A.    -- of 1 million? Okay. That's that  
25 industry, okay? So in -- in the industry, they

1 continue to rank, in the automotive industry.

2 Q. Okay. I guess I just don't see what  
3 the -- I still don't see the support that 25 percent  
4 of the top million because it seems like it ranks  
5 more than a million, and I don't -- I just don't see  
6 how we can -- we can say --

7 A. Somewhere -- somewhere along the line, I  
8 read -- because I obviously went to their site,  
9 somewhere along the line maybe they claim that the  
10 top million sites was -- was where you wanted to be  
11 or something like that, but that being if you -- if  
12 you took the top 1 million sites, that figure would  
13 still represent the 25 percentile, okay? Now, if  
14 they continue to rank past 1 million, that's not a  
15 concern to me, okay? So that would be my  
16 representation in that answer --

17 Q. Okay.

18 A. -- based on their independent analysis.

19 Q. Okay. And this -- what is the category  
20 for this ranking?

21 A. Okay. This would be  
22 "shopping/automotive/buyers services."

23 Q. Okay. Does -- this would be the retail --  
24 geared towards consumers?

25 A. Well, let's see who's -- let's see who's

1 in there.

2 Q. Edmunds and Blue Book.

3 A. Most of these is kind of a mix because  
4 most of these provide services to dealers. They're  
5 like the after-market supplier to -- to dealerships.

6 Q. Okay.

7 A. For example, you know, Kelley Blue Book is  
8 a supplier, which is ranked number one at this  
9 particular time. If you'll look down there, you'll  
10 see Auto World is ranked number 16, and that's the  
11 same company that I had the co-branding with, okay?  
12 They sell lead services to dealerships. So when you  
13 say "consumers," I'm not certain that that would be  
14 accurate, if you're -- if you're only considering  
15 consumers as being the individual looking to buy a  
16 car.

17 Q. So how -- what consumer then do you think  
18 is -- is -- when -- when it says "buyers services,"  
19 who's the buyer that -- that you believe that this is  
20 ranking? Is it dealers and -- and general consumers  
21 then?

22 A. Well, you know, that I don't know, but --  
23 but I would say that -- off the top of my head that  
24 "buyers services" would be these particular people,  
25 which is how I classified myself when I categorized



1 DealerDashboard, providing services to dealers, which  
2 all of these people do, they provide dealer -- you  
3 know, they -- they have a Web site, a consumer goes  
4 there, submits a lead. Before that lead gets to a  
5 dealer, a dealer has to pay for that lead. Does that  
6 explain your question?

7 Q. I think so.

8 A. Okay.

9 Q. Do you know how Ranking.com made the  
10 determination that you were ranked number 28?

11 A. I would assume statistically.

12 Q. All right. I have -- let's mark this. I  
13 have a printout from Ranking.com that discusses that.  
14 Actually, I'll give you the color one. That's the  
15 original.

16 (Deposition Exhibit 16 was marked for  
17 identification.)

18 BY MS. FINGUERRA-DUCHARME:

19 Q. I've handed you Exhibit 16, which is a  
20 printout from Ranking.com that describes how they  
21 gather the data and how they come up with their  
22 results.

23 A. Okay. Let me just state for the record,  
24 we're going to object again with relevancy. If I had  
25 no business at all, that -- it wouldn't interfere

1 with the registration of the trademark. Go ahead.

2 Q. Okay. If you see -- if you can turn to  
3 page -- paragraph 1 on -- on page 1 of Exhibit 16.

4 And can you read into the record how Ranking.com  
5 collects the data?

6 A. Are you talking about paragraph 1 --

7 Q. Yeah.

8 A. -- under how does Ranking.com gather data?

9 Q. Yes.

10 A. "Ranking.com tracks over 215,000 'Net  
11 surfers with our market research software (hundreds  
12 of participants are added daily) as they visit  
13 various websites during the previous month.  
14 Personally identifiable information is not collected,  
15 only generic information on the sites they are  
16 visiting is gathered with the exception of secure  
17 sites such as online banking or financial  
18 institutions."

19 Q. Okay. So do you know what this market  
20 research software is?

21 A. I do not.

22 Q. Okay. But it seems that they're basing  
23 their rankings on the activities of 215,000 people?

24 A. Pretty good representative sample  
25 statistically. Similar to a Nielsen.

1 Q. Okay. So it's just by tracking these  
2 people who have their software does Ranking.com come  
3 up with their determination?

4 A. Based on this -- this paragraph, if you're  
5 asking me to interpret how they -- it would appear  
6 that they have identified themselves as a statistical  
7 analysis organization, developed software that --  
8 that utilizes a representative sample similar to a  
9 Nielsen, who have people who have -- opt in to  
10 participate in their sampling. And based on the  
11 statistics of those 215,000, which statistically  
12 should represent the public at large, that is how  
13 they have developed their ranking.

14 Q. Okay.

15 A. Does that answer your question?

16 Q. It does. Okay. If you go down on this  
17 page 1 of Exhibit 16 under "Ranking.com Information  
18 Defined," can you read what they state under "Web  
19 Rank"? Can you read it into the record?

20 A. "Web Rank: The overall popularity rating  
21 of a site as determined by the behavior of  
22 Ranking.com's sample of Internet users."

23 Q. Okay. So the rankings are only based on  
24 a -- on a small sample of -- of Internet users?

25 A. I wouldn't consider 215,000 a small

1 sample. I think it's good -- statistically it's  
2 called a representative sample of the public at large  
3 with any marketing service similar to Nielsen  
4 Company.

5 Q. Okay.

6 A. Well respected.

7 Q. What do you base that statement on?

8 A. My knowledge and my college education with  
9 regards to sales and marketing in statistics.

10 Q. Okay. But as we've discussed based on  
11 this -- the information provided by Ranking.com, the  
12 only people who are participating in the ranking are  
13 those who have downloaded this software?

14 A. I'm not certain that that is what this  
15 says.

16 Q. Well --

17 A. I think it says it's based on -- they may  
18 place a cookie -- if you visit their site, they could  
19 place a cookie and then track you, okay? I don't  
20 think it says what -- what you're representing.

21 Q. Well, it --

22 MR. DAMERON: It's okay to say if you  
23 don't know.

24 THE WITNESS: Okay.

25 BY MS. FINGUERRA-DUCHARME:

1 Q. It just -- the first sentence says that  
2 "'Net surfers with our market research software," so  
3 that's what I was basing it upon.

4 A. Okay. Well, I don't -- I don't know, you  
5 know.

6 Q. Okay. If we go back to the -- Exhibit 15,  
7 in that Ranking.com, I guess you had it as  
8 Defendant's Exhibit 4, that page there, that 1/6/2007  
9 printout?

10 A. E(4), is that --

11 Q. E(4)?

12 A. Uh-huh.

13 Q. So what is DealerDashboard.com ranked as  
14 of January 6th, 2007, as reflected in Exhibit 15?

15 A. Based on their category rank, I ranked  
16 28th among the category that they are tracking,  
17 "shopping/automotive/buyers services."

18 Q. And that ranking was 28 out of how many?

19 A. I think they ranked the top 50. I think I  
20 only printed out, like, where DealerDashboard ranked.

21 Q. Okay. All right. So you're not sure if  
22 there's more -- if there were more results, if it  
23 went further than number 44?

24 A. I am not sure. Basically when I presented  
25 this evidence, it's that I just wanted to demonstrate

1 where DealerDashboard was. So --

2 Q. If --

3 A. -- you know, they may -- it may go up to  
4 100. It may go up to 1 million, I don't know.

5 Q. If -- I'm just looking at the bottom of  
6 the first page of the ranking. There's a little  
7 arrow --

8 A. Correct.

9 Q. -- that sort of shows to go to the next  
10 page?

11 A. Uh-huh.

12 Q. Because it's pointing to the right.

13 A. Okay.

14 Q. And then on the next page --

15 A. There's a back arrow.

16 Q. Yeah, there's a back arrow.

17 A. That could be all -- all that was  
18 presented that particular month.

19 Q. So if that was all that was presented,  
20 then DealerDashboard.com would have been 28 out of  
21 44?

22 A. If that's a representative at the end of  
23 the page or -- yes, 28th in of that category.

24 Q. So in that category, it's really the  
25 bottom 50 percent?

1 A. No, I don't think you could say that.

2 Q. Well, 28 out of 44 is what?

3 A. 28 out of 44? That would be in the -- 22,  
4 so it would be in the -- it would be in the below 50  
5 percentile, if that's what you're asking --

6 Q. Okay.

7 A. -- which is pretty dang good.

8 Q. Okay. There's a -- there's a -- you  
9 mentioned this before, and now that we have the  
10 document in front of us, I want to discuss it.  
11 There's a column called "Links," correct?

12 A. Correct.

13 Q. What -- what is that -- and on this  
14 printout, it says 415 for DealerDashboard.com. What  
15 is that column referring to? What links are they  
16 referring to?

17 A. The amount of links back to that site from  
18 other sites.

19 Q. Okay. So it's not the amount of links on  
20 your site to other sites?

21 A. No.

22 Q. Okay.

23 A. It's the amount of return links to your  
24 site.

25 Q. Okay. So the number of links that you

1 have on your Web site to other -- to other Web sites  
2 would not affect your ranking?

3 A. To my knowledge, it wouldn't.

4 Q. It's the opposite way?

5 A. I think that's the way it works.

6 Q. Okay.

7 A. I mean, there's a whole industry for  
8 search -- for search engine optimization and I really  
9 haven't explored that, but --

10 Q. I'm going to ask you a couple questions  
11 about that in a little while, so --

12 A. Yeah.

13 MS. FINGUERRA-DUCHARME: Okay. Now, if  
14 you can please mark this as Exhibit 17.

15 (Deposition Exhibit 17 was marked for  
16 identification.)

17 BY MS. FINGUERRA-DUCHARME:

18 Q. Okay. Exhibit 17 is a printout dated May  
19 4th, 2008 from Ranking.com in the category  
20 "shopping/automotive/buyers services." What is  
21 DealerDashboard.com's ranking as of this May 4th,  
22 2008 printout?

23 A. It is ranked 31st within its category.

24 Q. Okay.

25 A. 315,491 in the top million Web sites,



1 trust ranking of 5.

2 Q. What is the trust ranking, by the way?

3 A. Trust ranking, there's -- there's a lot of  
4 factors that are involved there. With regards to how  
5 trustworthy you are to the consumer, that's based on  
6 what information you provide, whether you provide a  
7 privacy statement, whether you provide company  
8 identification, how to contact you, whether you have  
9 any history with regards to not paying your bills,  
10 things like that.

11 Q. All right. Okay. And --

12 A. These -- these change -- these change  
13 monthly.

14 Q. In Exhibit 15, what was the trust gauge  
15 index for DealerDashboard.com?

16 A. I would say it was probably a 6. Usually  
17 that's what it is, but -- where are we at, E(4), is  
18 that where we're at?

19 Q. Yeah.

20 A. Yeah. It was a 6, yes.

21 Q. And what was it as of May 4th?

22 A. May 4th showed a 5.

23 Q. Excuse me?

24 A. May 4th showed a 5.

25 Q. A 5, okay. And --

1           A.     And I might, just to -- just to clarify,  
2 DealerDashboard ranks 31st. You have a ranking at  
3 number 10 -- at number 9 with a trust rating of 3.

4           Q.     Okay. How many Web sites were listed in  
5 this category on Exhibit 17 as of May 4th, 2008?

6           A.     43.

7           Q.     43. So even though there's less Web sites  
8 that are listed, DealerDashboard has gone down in the  
9 rankings since January of '07, right?

10          A.     This particular month.

11          Q.     Right.

12          A.     And I would -- I will say that prior to  
13 the date that was in evidence in the answer, I had  
14 been 36, 38 before. So it changes, based on those  
15 215,000 -- I would assume, the 215,000, what they  
16 visited in that particular month, so those change  
17 from month to month.

18          Q.     Right.

19          A.     The fact that DealerDashboard is in that  
20 category is what the aim of DealerDashboard is.

21          Q.     Okay. But it's -- it's based on  
22 popularity of consumers in the automotive market,  
23 right, the ranking?

24          A.     For that particular month.

25          Q.     All right. So at least in Exhibit 17, it

1 shows that the popularity went down for May of '08  
2 as -- as compared to in January of '07?

3 A. I guess you could conclude that, yes.

4 Q. Okay. Let's go back to your answer, which  
5 was Exhibit 14. Although, I will say that if -- if  
6 you -- if you want to take a break now for lunch, we  
7 can, and then we'll -- because I'm about to get into  
8 search engines, which can take -- take a while, so  
9 it's up to you.

10 MR. DAMERON: Do you want to take a break  
11 now?

12 THE WITNESS: That's fine with me.

13 MS. FINGUERRA-DUCHARME: Okay. So we'll  
14 take a break for lunch.

15 (A recess was taken from 12:46 to 1:31.)

16 MR. DAMERON: As far as objections are  
17 concerned, Mr. Dalton would object to any of  
18 these questions that pertain to ranking  
19 popularity or business income from this because  
20 he feels that -- that none of it is relevant as  
21 to whether he should have the trademark,  
22 correct?

23 THE WITNESS: (Nodding head.)

24 MR. DAMERON: That's fine.

25 MS. FINGUERRA-DUCHARME: Okay.

1 MR. DAMERON: There will be a continuing  
2 objection, so to speak --

3 MS. FINGUERRA-DUCHARME: Right. No  
4 problem.

5 MR. DAMERON: I won't try -- I won't try  
6 to hold things up.

7 BY MS. FINGUERRA-DUCHARME:

8 Q. All right. Let's look at Exhibit 5 of --  
9 I'm sorry, strike that.

10 Let's look at page 5 of Exhibit 14.  
11 Exhibit 14, as you recall, was your answer. In that  
12 top paragraph again, you state that "applicants  
13 distinct brand ranks number one under the search term  
14 DealerDashboard and Dealer Dashboard on search  
15 engines." Do you know how Web site listings appear  
16 on search engines -- I should say on search engine  
17 results?

18 A. I don't think I understand your question.

19 Q. Before, earlier today, you were talking  
20 about how important it is to be the number one hit,  
21 you know, search result listing?

22 A. Correct.

23 Q. So what I want to know is, do you know how  
24 the placement of a result is generated by a search  
25 engine? You don't need to discuss how an algorithm

1 works, but do you know how it is that your Web site,  
2 DealerDashboard, would be ranked on a search result  
3 list?

4 A. That would depend on the search engine  
5 you're speaking of --

6 Q. Okay.

7 A. -- because each search engine has, like  
8 you said, their algorithms, their -- their own  
9 methodology of determining their search results. And  
10 if you're asking in a general term, am I familiar  
11 with some of the -- some of the methods that search  
12 engines use to produce the results, I would say yes.  
13 If you're asking if I'm an expert in search engine  
14 optimization, no.

15 Q. No. I'm saying, before you spoke about  
16 how that's really your top way that you market  
17 yourself?

18 A. Correct.

19 Q. And I want to know how it is that you do  
20 that.

21 A. Okay. How -- how --

22 Q. How do you get your -- before -- before  
23 you had testified that -- I was asking you about  
24 consumer recognition --

25 A. Right.

1 Q. -- and what evidence you have of that?

2 A. Right.

3 Q. And you said when you put DealerDashboard  
4 into the computer -- into a search engine, my listing  
5 is going to be in the number one spot, and to me,  
6 that's my best way to get -- that shows me consumer  
7 recognition. So I want to know if you know how --  
8 how your Web site appears number -- in that number  
9 one spot. Are there things that you do to ensure  
10 that you can appear in a high listing?

11 A. Well, there's -- you know, each -- like I  
12 said, each search engine uses a different method. I  
13 have never engaged in search optimization to gain a  
14 number one spot, okay? All I have done is place my  
15 Web -- my site on the Web and try to deliver a  
16 quality site, a relevant site, based -- and I think  
17 probably the -- one of the factors has to be the  
18 longevity in business, as I was one of the first, you  
19 know, when basically AOL was only the -- the open --  
20 Open Directory Project was basically your main search  
21 engine. It would be pre-Google time.

22 I would say that listing has been able to  
23 elevate me to the number one spot. And then from  
24 that point further, for me to maintain that one --  
25 that number one spot on those terms, it has been

1 defending the brand. Now, did that answer your  
2 question?

3 Q. Not really.

4 A. Okay.

5 Q. I guess you had said before that each  
6 search engine sort of operates differently?

7 A. Uh-huh.

8 Q. So why don't we start with -- with each  
9 one, because I think in your answer you talk about  
10 AOL, Yahoo!, and Google.

11 A. Okay.

12 Q. So with Google, do you know how Google  
13 generates the -- the listings when somebody puts --  
14 when somebody puts in DealerDashboard into the Google  
15 search engine, do you know how those results appear?

16 A. Are you talking currently, or are you  
17 talking about the origination of DealerDashboard?  
18 Because there are two totally different methods.

19 Q. Why don't we talk about both.

20 A. Okay. Originally on Google, you submitted  
21 to their search engine. And based on those  
22 submissions, they would result in ranking. As  
23 Google --

24 Q. What did you submit to Google?

25 A. When -- you know, probably prior -- prior

1 to them really even becoming known, it was, you know,  
2 you would get an e-mail if you were listed on, say,  
3 the Open Directory Project to submit to their search  
4 engines, you know, as they were, you know, working  
5 out of their garage or their one-room bedroom,  
6 whatever they did to -- to develop a -- to where they  
7 are today, yeah, okay? So -- so they solicited me --

8 Q. Okay.

9 A. -- initially.

10 Q. All right. And you gave them some kind of  
11 electronic information then?

12 A. Yeah. They -- they had a form you filled  
13 out and you -- and you did key words.

14 Q. Okay.

15 A. And then based on those key words, you  
16 know, you would rank within the -- within their  
17 engine. Since then, I don't even think you  
18 necessarily have to submit to their search engine  
19 because I think they send out a -- what's called a  
20 spider or crawler, and crawl all sites and grab  
21 certain key words or certain relevancy with regards  
22 to a search term, and then rank you accordingly to  
23 that.

24 Q. Is the content in your Web site easily  
25 available to these Web spiders?



1 A. Yes.

2 Q. Okay. And you -- you purposely --

3 A. Well, the -- the index page is, yes.

4 Q. And you purposely crafted it so that it  
5 would be easily accessible to these Web spiders?

6 A. The index page is -- well, no, not really,  
7 because the best way for -- to do spiders now is they  
8 have -- have a robot page that -- that directs the  
9 spiders and it has all your information. No, my site  
10 has been optimized in HTML code with metatags on key  
11 words that I held relevant to my site. And so just  
12 based on that core information is how it is ranked  
13 within the search engines.

14 Q. Okay. So you -- you base it -- you  
15 basically load up your metatags with your key words,  
16 and that's what gets reviewed by the search engines  
17 to allow your Web site to be ranked high for those --  
18 for DealerDashboard searches?

19 A. Well, I think Google doesn't really pay  
20 much attention to key words anymore.

21 Q. Right.

22 A. They actually use the content of the page.  
23 And, you know, even if it isn't in your metatag, they  
24 assign a value to, you know, certain things that are  
25 on your page and then would make that appear with

1 regards to -- to the search.

2           Q.     So because DealerDashboard appears so much  
3 on your Web site page, it leads it to be having a  
4 high ranking on a Google search?

5           A.     I don't think I can come to that  
6 conclusion, but let's take a look at the -- at  
7 DealerDashboard because I don't see -- you know, I  
8 don't see where DealerDashboard appears in the  
9 written form.

10          Q.     Well, I'm just trying to go back to what  
11 your answer was before, because you said that they  
12 searched the content. And I'm just wondering --

13          A.     Right. But that -- you're trying to --  
14 you're -- my interpretation is that you're taking  
15 what I'm saying and concluding that because  
16 DealerDashboard is plastered all over the page or in  
17 the metatags, that's why it ranks there. That's not  
18 the case.

19          Q.     Well, then, why -- why do you think it  
20 ranks where it does? You -- you claim in paragraph  
21 -- on page 5 of your answer that "applicant's  
22 distinct brand ranks number one under the search term  
23 DealerDashboard and Dealer Dashboard on the search  
24 engines Google, AOL, and Yahoo!," so I'm trying to  
25 understand how it is that it ranks number one. What

1 causes it to be number one?

2           A.    You know, that's probably a question for  
3 Google, AOL, and Yahoo! because, you know, I can't --  
4 I can't really testify. That would be speculative at  
5 this point --

6           Q.    Okay.

7           A.    -- for me to testify why it does. All I  
8 know is it does, it has from day one. And I would  
9 say why, because I was the only one out there that  
10 used "Dealer" and "Dashboard" together, so that's how  
11 unique it was. So I was number one one time and the  
12 only one at one time. And -- and, you know, I have  
13 just tried to maintain that through defense of the  
14 brand.

15          Q.    But now there are lots of others that use  
16 it, correct?

17          A.    Use what?

18          Q.    Use DealerDashboard.

19          A.    There are other listings that will appear.  
20 For example, if someone used the term "Dealer,"  
21 someone used the term "Dashboard," it would appear in  
22 the search engine.

23          Q.    Okay.

24          A.    And there are -- there are automotive  
25 companies that -- that have attempted to use

1 DealerDashboard and appear in those search results,  
2 and for the most part I've been successful in having  
3 them cease that activity.

4 Q. When you say "for the most part," which  
5 are the ones you have not been successful in?

6 A. Honda -- well, actually, I was successful,  
7 they no longer appear in the search engine. But it's  
8 a continuing evolving, just like any -- any brand  
9 with any company that wants to exploit a particular  
10 brand, there will be always somebody there trying to  
11 exploit their brand, so it's a continuing process.  
12 Now, I don't do anything other than defend a brand to  
13 maintain the number one spot at this stage.

14 Q. Is there someone that you've sent a  
15 cease-and-desist letter to that hasn't complied with  
16 your demands?

17 A. I don't think so. To the best of my  
18 knowledge, I don't think so. Most have ceased.  
19 Sometimes it takes more than one letter, but -- there  
20 are some I haven't sent cease-and-desist letters to.

21 Q. You had said before that you believe that  
22 AOL and Yahoo! operate differently than Google does  
23 in terms of how they crawl the -- the Web to find  
24 search results?

25 A. I would assume they do. I mean, they've

1 evolved, just like anybody else, and I don't think --  
2 I wouldn't think that Google would provide the same  
3 algorithm to its competitors, and I don't think its  
4 competitors would provide the same algorithm to -- to  
5 Google. And, you know, my only -- my only example of  
6 that would be, you know, when you type in a search  
7 engine -- different search engines, you're going to  
8 get different results.

9           Q.    Well, have you -- have you changed your  
10 source code in a way to optimize indexing for  
11 DealerDashboard.com?

12           A.    No.

13           Q.    Okay.

14           A.    My -- my -- it has been from day one,  
15 which metatag -- you know, the metatags haven't  
16 changed. I mean, I may have -- I may have removed  
17 things that I didn't feel was relevant anymore or  
18 things like that, but --

19           Q.    I know that Yahoo! also has a paid  
20 submission service --

21           A.    Uh-huh.

22           Q.    -- to guarantee their Web crawling. Do  
23 you participate in that?

24           A.    I have when -- several years ago I -- I  
25 paid an independent company, ineedhits, to just

1 submit -- a one-time submission. I think I've done  
2 that twice. Other than that, no, I have not. I've  
3 never paid Yahoo! or -- or AOL directly to give me a  
4 ranking. I've never paid to be included in the  
5 directory.

6 Q. All right. Let's look at the exhibits you  
7 attached to your answers. There's a Google search  
8 result, I think it's Exhibit F, which is part of the  
9 Deposition Exhibit 15.

10 A. Okay.

11 Q. So what was this search for? And first,  
12 why don't you explain for the record what this is a  
13 printout of?

14 A. I'm at Exhibit -- Defendant's Exhibit F of  
15 Deposition Exhibit Dalton 15, and this is a search --  
16 a printout of a search result in the search engine  
17 Google on 1/6 of 2007 on the search term  
18 "DealerDashboard," with no space.

19 Q. Okay. What does it say under number of  
20 results? It says, "Results 1 - 10"?

21 A. 1,110 for DealerDashboard.

22 Q. Okay. So there's 1,110 --

23 A. Listings on that term.

24 Q. That would have DealerDashboard?

25 A. Well, that would have "Dealer," that would

1 have "Dashboard."

2 Q. And then it says -- do you see --

3 A. Or, actually, I guess that would be -- I  
4 guess that would be just DealerDashboard, yeah.

5 Q. Do you see where it says, "Did you mean"?

6 A. Right.

7 Q. And it says, "Dealer Dashboard"?

8 A. Correct.

9 Q. What does that mean?

10 A. Well, it's separated, "Dealer" and  
11 "Dashboard" as an additional search option for the  
12 consumer.

13 Q. And if you look three pages in, there's  
14 another Google search, correct?

15 A. Correct.

16 Q. And what is that search for?

17 A. That is a search term on the term in the  
18 Google search engine, dated 1/6, 2007, on the search  
19 term "Dealer Dashboard."

20 Q. And how many hits did that result in?

21 A. 1,140,000.

22 Q. So when there's a space, you get 1 -- over  
23 1 million, and when there's no space, there's 1100  
24 Web sites that would have DealerDashboard connected  
25 as one word?

1 A. On that particular date, based on Google.

2 Q. And if you -- let's look back on the first  
3 page, Defendant's Exhibit F. That was for  
4 DealerDashboard as one -- as one word.

5 A. Okay.

6 Q. How many listings were there?

7 A. Did I print out, you mean?

8 Q. Yeah.

9 A. I think I printed -- I think I only  
10 printed the first page --

11 Q. All right.

12 A. -- of each. It looks like 11 listings,  
13 which would be your top 10 listings.

14 Q. And the first few relate to -- is your Web  
15 site, right?

16 A. Every one of them is my Web site.

17 Q. All right.

18 MR. DAMERON: Is that your Web site?

19 THE WITNESS: Yeah. That's a reciprocal  
20 link.

21 MS. FINGUERRA-DUCHARME: Okay. Let's mark  
22 this next exhibit.

23 (Deposition Exhibit 18 was marked for  
24 identification.)

25 BY MS. FINGUERRA-DUCHARME:



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/339,571

Published: May 30, 2006 at TM 674

Mark: DEALERDASHBOARD

HONDA MOTOR CO., LTD.,	)	Opposition No. 91/173,105
	)	
Opposer,	)	
	)	NOTICE OF RELIANCE
v.	)	
	)	
MICHAEL DALTON,	)	
	)	
Applicant	)	
	)	

**TAB A**  
**continued**

1 Q. Okay. Exhibit 18 is a printout from a  
2 Google search on May 4th, 2008, and this search is  
3 for "dealer dashboard."

4 Okay. On this printout, which Web site  
5 appears first?

6 A. Mine.

7 Q. Is "Data Analysis Dashboard" --

8 A. That is a paid sponsored link.

9 Q. It's a paid sponsored link. And what  
10 about the second one, the dundasconsulting.com?

11 A. That is a paid sponsored link.

12 Q. Okay. And is the enterprise-dashboard.com  
13 a paid sponsored link?

14 A. I don't see that, ma'am.

15 MR. DAMERON: Right there.

16 A. "Sales Management Enterprise Dashboards"?  
17 BY MS. FINGUERRA-DUCHARME:

18 Q. Yeah.

19 A. Oh, that is -- that's a new one that just  
20 popped up, I guess.

21 Q. So this is not affiliated with you?

22 A. No.

23 Q. The "Dealership Sales Management  
24 Enterprise Dashboards" is not affiliated?

25 A. No. And if you'll take a look at that,

1 that is a creative way to appear in the listing of  
2 DealerDashboard. This particular enterprise,  
3 enterprise-dashboard, has intentionally in their  
4 title used DealerDashboards.

5 Q. Okay. If you look on the -- the Web site  
6 that's indented in, it goes, "Auto Dealer Sales  
7 Manager Dashboards Enterprise Dashboard." So it's  
8 for the same listing. And you'll see in that little  
9 summary there, it says, "Equipment Dealer Dashboard"?

10 A. Okay.

11 Q. That "Dealer Dashboard" is not referring  
12 to your product or services, right?

13 A. I don't know. I would have to visit that  
14 site. I don't know if that's a link back to me or if  
15 that's -- or if that's, you know, someone attempting  
16 to exploit my brand, I don't know.

17 Q. So do you -- do you ever go by Equipment  
18 Dealer Dashboard?

19 A. I do have a section in my portal for  
20 automotive equipment.

21 Q. How about the next listing down, "Denon  
22 Canada/Dealer Dashboard"?

23 A. Right.

24 Q. Is that affiliated with you?

25 A. It is not.

1 Q. Okay. And you see how it says, "The  
2 Dealer Dashboard is the easiest way for Denon dealers  
3 to get the latest information on Denon products,  
4 events, company information and more"?

5 A. Uh-huh.

6 Q. And that's not affiliated with you?

7 A. It is not.

8 Q. But they're using the terms "Dealer  
9 Dashboard" to describe their services?

10 A. They are --

11 Q. Okay.

12 A. -- non-competitively. Denon is not in  
13 automotive.

14 Q. And the next listing down, it says,  
15 "Dealer Dashboard Dealer Dashboard Key Performance  
16 Indicators," and the Web site is  
17 goallinesolutions.com. Is that affiliated with you?

18 A. No.

19 Q. And the next one, it says, "Dashboard  
20 Online," "Dashboard is the market leader in Web  
21 management solutions for auto dealers. Dashboard  
22 rapidly develops high quality system products and  
23 related services," and it says dashboardonline.com.  
24 Is that related to you?

25 A. It is not.

1 Q. Okay.

2 A. I have been unable to identify them. I  
3 suspect that is -- belongs to Nowcom.com in  
4 retaliation. They do not provide any information on  
5 their Web site. They -- they used a cloaked -- not  
6 cloaked -- alias registrar. I have attempted to have  
7 them cease because not only have they duplicated my  
8 services, they additionally have duplicated my trade  
9 dress.

10 Q. Okay. The next listing, which would be on  
11 page 2 of Exhibit 18, "Bookshelf v7.8: Using Siebel  
12 Dealer Dashboards (Dealer)." And is that related to  
13 you?

14 A. That is not -- they were issued a cease  
15 and desist. This is an old press release. They have  
16 ceased and desist.

17 Q. I'd appreciate if you could produce any of  
18 these cease-and-desist letters and any correspondence  
19 between you and these third parties.

20 A. What I have. I didn't keep a lot of them.

21 Q. Okay. Whatever you have. The next one  
22 down is "Marantz America," M-a-r-a-n-t-z. And it  
23 says, "The Dealer Dashboard is the easiest way for  
24 Marantz dealers to get the latest ... As a Marantz  
25 dealer, the Dashboard provides you with all kinds of

1 product ...". Is this associated with you?

2           A.    It is not. Marantz is part of Denon, the  
3 same one that you mentioned earlier.

4           Q.    Okay.

5           A.    They have been -- as of this week, they  
6 have been sent a cease and desist because they do do  
7 car audio.

8           Q.    And the next one is "Subaru Australia  
9 Drives Dealer Productivity Via Plumtree-Powered ..."  
10 "The dealer dashboard has streamlined communication  
11 between Subaru and its dealer ... The dealer  
12 dashboard in the portal has been a huge win for  
13 Subaru." Is that -- is that related to you?

14          A.    That -- that is -- that is the same as  
15 Siebel up there. They used the Siebel interface. To  
16 the best of my knowledge, they have ceased.

17          Q.    So they're not affiliated with you?

18          A.    They are not.

19          Q.    All right. What about -- I'm sorry, if we  
20 can go back to page 1 of Exhibit 18. The sponsored  
21 links on the right --

22          A.    Uh-huh.

23          Q.    -- do you -- are you -- are any of these  
24 sponsored links related to you?

25          A.    No. I don't pay for it.

1 Q. Okay.

2 A. I don't pay for advertising.

3 Q. So -- and there's a link that says "More  
4 Sponsored Links," right? So if you clicked on that,  
5 do you think that we would get a few more?

6 A. Based -- based on the assumption that  
7 they -- they rank these according to relevancy, you  
8 can see none of the sponsored links contain the words  
9 "dealer" and "dashboard," okay?

10 Q. But seven sponsored links were generated  
11 in -- in response to the search term "dealer  
12 dashboard"?

13 A. Seven paid links were.

14 Q. Right.

15 A. Those are advertising links.

16 Q. How many results came up with this search  
17 for "dealer dashboard"?

18 A. It says 1 - 10.

19 Q. Okay.

20 A. I'm assuming that's correct.

21 Q. And we've just determined that seven out  
22 of those ten are not related to you?

23 A. I count eight, ma'am.

24 Q. You count eight, okay. So a consumer as  
25 of yesterday, if they typed in "dealer dashboard,"

1 out of the ten results, eight of them would be for  
2 services and -- services and products that are  
3 unrelated to what you provide?

4 A. That's correct.

5 Q. Okay.

6 A. I might note, mine would be the top two.

7 Q. That's correct. Okay. Now, let's look  
8 back at the documents you submitted with your answer,  
9 which -- Exhibit 15. And I think that after the  
10 Google search, there may be an AOL search. And,  
11 again, you have -- you have two searches, one for  
12 dealer hyphen -- I'm -- dealer, space, dashboard and  
13 one for dealer without the space. For the first one,  
14 which is DealerDashboard without the space, how many  
15 results are generated there?

16 A. We're on Defendant's Exhibit G? I don't  
17 see where they show the analysis of how many results.

18 Q. How many are printed on -- on the page  
19 that you submitted?

20 A. Okay.

21 Q. Sorry about that.

22 A. I'm sorry, I misunderstood. Just on page  
23 1 or -- yeah, okay. There's 10 -- these are the top  
24 10.

25 Q. And of the top 10, how many are related to



1 your services?

2 A. Seven.

3 Q. Seven, okay. Can you just let me know  
4 which of the three that are not related to your  
5 services?

6 A. We -- we discussed this one before, the  
7 "Managing the entire sales process" with the sewells,  
8 which is in Australia -- as you see, that's in  
9 Australia --

10 Q. Okay.

11 A. -- unrelated to the U.S. market. And that  
12 is Subaru's a -- the distributor in Australia. And  
13 then, once again, Denon.

14 Q. And which one was the third one?

15 A. Well, the one is at my site, the job that  
16 -- DealerDashboard and careerjet.com, but it --

17 Q. Okay.

18 A. -- does refer to my site because that's a  
19 link back to my site.

20 Q. Okay.

21 A. Make sense?

22 Q. Yeah. So that is related to --

23 A. Yeah.

24 Q. -- to your Web site, okay. So there's  
25 just two for this one?

1           A.    Let me make sure that that's the way I am  
2 interpreting it.  Yes.

3           Q.    So for -- in January of '07 for a search  
4 for DealerDashboard connected as one word, of the --  
5 the ten results, two of them are not related to you?

6           A.    Right.  80 percent, yes.

7           Q.    And then on the next search results, this  
8 now is searching for Dealer, with a space, Dashboard,  
9 and this was also done on January 6th of '07.  Can  
10 you look through those and tell me --

11          A.    Okay.

12          Q.    Tell me the -- first, let's establish how  
13 many hits there were.

14          A.    "Hits," you're meaning search results?

15          Q.    Search results, yeah.

16          A.    Okay.  The first page is usually the first  
17 10, but I will -- I'll do a manual count.

18          Q.    Well, there's --

19          A.    Okay.  This is more.  14.

20          Q.    Oh, you're not counting the top three?

21          A.    Those are paid links.

22          Q.    Okay.  So those are --

23          A.    Those are sponsored by people paid to --  
24 to be put there.

25          Q.    Okay.  But they -- but that's what the

1 consumer first sees are these first three results?

2           A.    The consumer sees that, but the consumer  
3 is well aware that somebody has paid to be there and  
4 not necessarily reflective of the -- of the actual  
5 search term in which they --

6           Q.    Okay.  So --

7           A.    For example, Pontiac Motor Company, Mazda  
8 bought spots in the first three spots.  So  
9 competitors -- there has been case history,  
10 competitors will definitely buy your search terms and  
11 it has been determined to be legal to do that.  So  
12 the consumer is well aware of that.

13          Q.    Okay.  So notwithstanding the sponsored  
14 links, we've got 14 search results?

15          A.    That was my count, ma'am.

16          Q.    Okay.  So of these 14, let's go -- let's  
17 go through -- let's go through them like we did  
18 before.  The first --

19          A.    14, yes.

20          Q.    The first two are yours, right?

21          A.    Correct.

22          Q.    DealerDashboard.com, DealerDashboard.com.  
23 The third one down is Denon, which we spoke about  
24 before?

25          A.    Uh-huh.

1 Q. This next one, "Steve Kolb Web Design,"  
2 "GUI designed for Dealer Dashboard Data Mart  
3 project." Is that related to you?

4 A. It is not. If you go to that particular  
5 site, you won't find DealerDashboard on any of their  
6 things, so that apparently must be in a metatag.

7 Q. They talk about a "Dealer Dashboard Data  
8 Marked project"?

9 A. Yeah. I've been to that site and I -- you  
10 go to the site, you don't see DealerDashboard, so it  
11 has to be embedded.

12 Q. Okay. This next one, the "dashboardspy,"  
13 is that related to you? It talks "Equipment Dealer  
14 Dashboard"?

15 A. No. And I'll tell you, I went to -- went  
16 to there. That looks like a -- that looks like a  
17 spam site to me.

18 Q. The next one down, "PopShop Online," "in  
19 your Dealer Dashboard Help File list." Is that  
20 related to you?

21 A. It is not. And I'm surprised to see them  
22 because they agreed to cease and desist.

23 Q. The next one is also "PopShop."

24 A. Those have to be old.

25 Q. This is from January of '07.

1           A.    Yeah, but that -- you know, it was some  
2 kind of thing that has been cached.

3           Q.    Okay.

4           A.    It may still appear, even though they've  
5 agreed to cease.

6           Q.    The next one was for "thomasnet.com."  
7 "The Dealer Dashboard also connects dealers to a  
8 variety of online advertising options." Is that  
9 related to you?

10          A.    That is not. That is a directory that's  
11 an old directory. They received a cease and desist  
12 and has agreed.

13          Q.    The next one is "The Cobalt Group"?

14          A.    That's an old press release.

15          Q.    It's not related to you?

16          A.    Not related to me.

17          Q.    Okay. The next one is "'Dashboard' Ward's  
18 Dealer Business." That's not related to you either?

19          A.    I don't think so. Ward's is a national  
20 dealer magazine. At one time, I was listed on their  
21 site, but that looks like -- that looks like they  
22 have a certain article where just the terms "Dealer"  
23 and "Dashboard" appear.

24                MS. FINGUERRA-DUCHARME: Okay. Mark this,  
25                please.

1 (Deposition Exhibit 19 was marked for  
2 identification.)

3 BY MS. FINGUERRA-DUCHARME:

4 Q. Okay. I'm handing to you Exhibit 19,  
5 which is a printout from May 4th, 2008, and it's a  
6 search for "dealer dashboard." It's an "AOL Search."  
7 So let's count now -- we -- we won't count the  
8 sponsored links. There are three sponsored links  
9 that come up for -- when you type in "dealer  
10 dashboard." For the results, how many results appear  
11 on this page?

12 A. It looks like -- do they have -- it looks  
13 like they might have sponsored links at the bottom of  
14 their top 10, maybe not, so -- because it says --

15 Q. It could be because it says, "More  
16 Sponsored Links For."

17 A. Right. Because normally they -- in the  
18 list, it says the top ten is on the first page, but  
19 then I see these others --

20 Q. Okay. Let's --

21 A. -- so --

22 Q. Let's go through each one then and we'll  
23 just see what's -- what's related and what's not.

24 A. The first two are definitely mine.

25 Q. Yep.

1           A.     The top two.

2           Q.     Yep.  Then the next one is this

3 "Dealership Sales Management Enterprise Dashboards"?

4           A.     Not mine.

5           Q.     Okay.  And the next, the sub-one that's

6 connected.  That's not yours either, for the "Auto

7 Dealer Sales Management Dashboards Enterprise."  The

8 next one is "Denon Canada/Dealer Dashboard"?

9           A.     Right.

10          Q.     Next one is "Dashboard Online."

11 "Dashboard is the market leader in Web management

12 solutions for auto dealers.  Dashboard rapidly

13 develops high quality system products and related

14 services"?

15          A.     That's the same one I told you that I

16 suspect being a retaliation Web site.

17          Q.     Okay.  That's not yours.

18          A.     Because there's no -- there -- I don't

19 know who they are.

20          Q.     "Marantz America," "The Dealer Dashboard

21 is the easiest way for Marantz dealers to get the

22 latest"?

23          A.     Right.

24          Q.     That's not yours?

25          A.     It is not.

1 Q. "Subaru Australia"?

2 A. Right, is not.

3 Q. "MaximTrak Technologies Announce  
4 Partnership with Premier Dea..." "Dealer Dashboards  
5 is an F & I management reporting system that provides  
6 automobile dealership owners with complete  
7 performance reports."

8 A. These -- this is -- Premier is a floorplan  
9 financing company owned by American -- Great American  
10 Insurance. They have just done this. I just noticed  
11 this yesterday. They will be getting a  
12 cease-and-desist letter because they are in direct  
13 competition with floorplan financing, and I -- I  
14 think quite possibly it's a direct result of trying  
15 to exploit my brand.

16 Q. So this is not related to you?

17 A. It is not.

18 Q. The next one I know is related to you.  
19 It's "Hamilton County Republican Party.com."

20 A. It is.

21 Q. You can tell me about that maybe on a  
22 break.

23 Okay. And then --

24 A. Activist.

25 Q. I think -- I think you're correct, I think



1 the rest of these are sponsored links.

2 A. Yeah. And I think that would change the  
3 statistics on the last one we spoke to, because that  
4 was in the same situation I -- no?

5 Q. I don't -- I don't -- yeah.

6 A. My wrong, my wrong.

7 Q. I think it's just --

8 A. You're right.

9 Q. I think it's AOL.

10 A. You're right.

11 Q. Okay. Let's now look to the Yahoo! search  
12 from -- from your answer.

13 A. Okay.

14 Q. For the -- let's look to the second search  
15 results, which is the one for the "Dealer Dashboard."  
16 And Yahoo! makes it easier for us because they number  
17 the results 1 through 10, so now we know what the  
18 sponsored link is. Let's go through these and see  
19 which ones are related to you. The first two are  
20 yours. The second one is that Denon again?

21 A. Uh-huh.

22 Q. So that's not related to you. The fourth  
23 one?

24 A. That's Denon as well, same.

25 Q. Not related to you?

1 A. Right.

2 Q. Number 5?

3 A. Is this Subaru sewells, old -- that's an  
4 old -- old press release.

5 Q. Number 6?

6 A. Number 6 has ceased and desist.

7 Q. Number 7? That says "Subaru Australia."

8 A. Yeah, that's -- that's an old press  
9 release.

10 Q. Marantz is not related to you?

11 A. Right.

12 Q. "Ward's Dealer Business," is that --

13 A. That is not -- that is not related to me,  
14 I don't think.

15 Q. And then the last one is an article about  
16 Subaru?

17 A. Oh, no, okay. I've been to this check --  
18 "Ward's Dealer Business." It's two separate  
19 articles, and the check -- the "Dealer Business" was  
20 one article, and Ward's is a publication magazine.  
21 The dashboard is an article on when your check engine  
22 light comes on. "Check That Dashboard" is what's the  
23 name of the article. And the last one -- I'm sorry,  
24 the last one is the Subaru again, which is an old  
25 press release.

1 MS. FINGUERRA-DUCHARME: Let's mark this  
2 next exhibit.

3 (Deposition Exhibit 20 was marked for  
4 identification.)

5 BY MS. FINGUERRA-DUCHARME:

6 Q. Okay. I'm handing you a search result for  
7 Yahoo! for "dealer dashboard," printed on May 4th,  
8 2008. On the first page, how many -- how many hits  
9 were there for the search "dealer dashboard"?

10 A. 4,630,000 --

11 Q. Okay.

12 A. -- of which DealerDashboard is number one.

13 Q. So let's go through these results and see  
14 which ones -- how many are related to you. The first  
15 one is DealerDashboard. The second one is Denon USA?

16 A. Not related.

17 Q. The next one is McIntosh?

18 A. Not related.

19 Q. Okay.

20 A. No -- well --

21 Q. Will you read for the record what it says?

22 A. What?

23 Q. Under "McIntosh/Dealer Dashboard"?

24 A. "Welcome to the McIntosh Dealer  
25 Dashboard."

1 Q. Okay. And that's not related to you?

2 A. Nor are they related to the automotive  
3 industry.

4 Q. The next one says -- this is  
5 DealerDashboard for -- this is your site?

6 A. Correct.

7 Q. Okay. The next one is -- is "Dashboard  
8 Online"?

9 A. We spoke about this particular site. It's  
10 not related. I'm seeking the identity.

11 Q. "Marantz America," not related?

12 A. Not related. They are related to Denon.

13 Q. "DealerSocket Dashboard," not related?

14 A. It is not related.

15 Q. "Panama City Suzuki Dealer"; is that  
16 related?

17 A. It is not related. It shows up under the  
18 term "dashboard" and "dealer."

19 Q. "Dashboard Mobile Financial," and it's  
20 "Dashboard Communication"?

21 A. It looks like some kind of a press  
22 release.

23 Q. It's not related, though, right?

24 A. Not related, no.

25 Q. And then "Direct Connect"? I don't know

1 if these are part of the sponsored results, too.

2           A.     All of -- I would say -- I would say,  
3 yeah, I don't know. They look -- I don't know if  
4 this is sponsored or non-sponsored.

5           MS. FINGUERRA-DUCHARME: Do you -- do you  
6 need a break or should we keep going?

7           THE WITNESS: I -- yeah, I do.

8           MS. FINGUERRA-DUCHARME: Okay. Because --  
9 we'll take a break here. It's a good spot to  
10 stop again.

11           (A recess was taken from 2:16 to 2:26.)

12           MS. FINGUERRA-DUCHARME: All right. So my  
13 big stack here.

14           THE WITNESS: Don't tell me that.

15           MS. FINGUERRA-DUCHARME: You can mark  
16 that. When we get through these, at one point  
17 the copy machine kicked into color pages, so  
18 there might be some bright yellow and bright  
19 blue and orange. Don't interpret anything with  
20 that. I didn't feel like throwing away paper.  
21 I'm sure you're green, also, so you probably  
22 appreciate that. So this is Exhibit, what, 21?

23           (Deposition Exhibit 21 was marked for  
24 identification.)

25 BY MS. FINGUERRA-DUCHARME:

1           Q.     Okay.  This -- Exhibit Number 21 is a  
2 printout from boating-industry.com, printed on May  
3 3rd, 2008.  It appears to be a press release from ADP  
4 Lightspeed.  And have you ever been to this Web site  
5 before?

6           A.     (Shaking head.)

7           Q.     Okay.  Can you please read for the record  
8 the first paragraph in the press release?

9           A.     "ADP Lightspeed is no stranger to the  
10 automotive, heavy truck and powersports markets,  
11 where its software programs rank No. 1 in all three  
12 industries and have reigned there for years."

13          Q.     Okay.  And if you go down to the sixth  
14 paragraph, you can read the --

15          A.     "In addition"?

16          Q.     Yep.

17          A.     "In addition ADP Lightspeed provides a New  
18 Dealer Dashboard that will allow a user to customize  
19 their view of performance factors and track what is  
20 important to them and their department."  Do you want  
21 one more?

22          Q.     No, that's good.

23          A.     Thanks.  I appreciate this.  Can I have a  
24 copy of this?  Because I'd like to send them my  
25 cease-and-desist letter.

1 Q. Well, that was my question to you, is --  
2 is this Dealer Dashboard related to your services?

3 A. It is not.

4 Q. Is DealerDashboard.com affiliated at all  
5 with this company?

6 A. With ADP, no.

7 Q. Okay. Before today, did you know of ADP's  
8 use of the terms "Dealer Dashboard" to describe its  
9 services?

10 A. I did not.

11 Q. Okay.

12 A. And this says "New." Is the press release  
13 actually dated?

14 MR. DAMERON: I don't see a date.

15 MS. FINGUERRA-DUCHARME: Okay. Mark that.  
16 And I actually have a couple of extra stuff, so  
17 I'm going to make a pile for you with my extra  
18 stuff here. So this would be Exhibit 22.

19 (Deposition Exhibit 22 was marked for  
20 identification.)

21 BY MS. FINGUERRA-DUCHARME:

22 Q. Okay. Exhibit 22 is a printout from May  
23 3rd, 2008 from a Web site, getsharepoint.com, and  
24 it's about a company Karastan, K-a-r-a-s-t-a-n. Are  
25 you familiar with this Web site?

1           A.     No.

2           Q.     Okay.  If you can go to page 2 of Exhibit  
3 22, and can you read into the record that first  
4 paragraph?

5           A.     Starting with "Each dealer"?

6           Q.     Yep.

7           A.     "Each dealer 'Rep Group' needed its own  
8 site, so first we designed a portal 'entry' page.  
9 All of the dealers go to [www.repnews.com](http://www.repnews.com) to log in  
10 and select their respective dashboard.  Just like a  
11 car dashboard delivers critical information to the  
12 'driver (i.e. speed, gear, lights, gas, temperature,  
13 etc.) each dealer Dashboard delivers all the current  
14 and important information at a glance (i.e. newest  
15 documents, announcements, calendars, links, etc.)"

16          Q.     Okay.  Is this "dealer Dashboard" related  
17 to your DealerDashboard.com business?

18          A.     It is not.

19          Q.     Is your DealerDashboard.com Web site  
20 affiliated with Karastan?

21          A.     It is not.

22          Q.     Before today, did you know of Karastan's  
23 use of the terms "Dealer Dashboard" to describe its  
24 services?

25          A.     I did not.



1 Q. Okay.

2 A. I would note they will receive a cease and  
3 desist, although they are not affiliated in the  
4 automotive industry.

5 MS. FINGUERRA-DUCHARME: Off the record.

6 (A recess was taken from 2:31 to 2:32.)

7 (Deposition Exhibit 23 was marked for  
8 identification.)

9 BY MS. FINGUERRA-DUCHARME:

10 Q. Okay. You have just been handed Exhibit  
11 23, which is a Web site printout from May 3rd, 2008  
12 from datamotive.com. Are you familiar with  
13 DataMotive?

14 A. I am not.

15 Q. Okay. If you look on page 2, can you  
16 please describe for the record what appears there in  
17 terms of design?

18 A. I'm -- I'm sorry?

19 Q. Would you describe --

20 A. Looks like a dashboard of an automobile  
21 with the logo carsales.com.cu (sic).

22 Q. Au maybe?

23 A. Must be China maybe, I don't know.

24 Q. Okay. And can you read for the record the  
25 text that appears under the dashboard image?

1           A.     "The Dealer Dashboard appears in your home  
2 page when you log in to Autogate Pro."

3           Q.     And the second sentence?

4           A.     "It provides a real-time snapshot of the  
5 performance of your business."

6           Q.     Are you -- is Autogate Pro related to the  
7 DealerDashboard.com business?

8           A.     It is not.

9           Q.     Is your DealerDashboard.com Web site  
10 affiliated with Autogate Pro?

11          A.     It is not.

12          Q.     Before today, did you know of Autogate  
13 Pro's use of the term "Dealer Dashboard" to describe  
14 its services?

15          A.     I did not know of DataMotive.  
16 Carsales.com has received a cease-and-desist letter  
17 from me, and it was my understanding that they had  
18 ceased using that. This is the first I've seen this  
19 DataMotive.

20                 I don't know if this is a press release or  
21 something that they -- that carsales has -- has  
22 agreed to cease or did cease or -- or what, I  
23 don't -- I've never seen this and -- before. And to  
24 the best of my knowledge, it didn't appear in the  
25 first ten search results. Oh, Australia, au, not cu.

1 (Deposition Exhibit 24 was marked for  
2 identification.)

3 BY MS. FINGUERRA-DUCHARME:

4 Q. Exhibit 24 is a printout from May 3rd,  
5 2008 from rvtraderonline.com. And Mr. Dalton, if you  
6 can look to page 4 of Exhibit 24, and if you can read  
7 for the record, starting with "Also new for RV  
8 dealers"?

9 A. "Also new for RV dealers is the Dealer  
10 Dashboard e-newsletter."

11 Q. And if you can continue reading.

12 A. "Delivered directly to advertisers'  
13 inboxes every month, it offers tips on how to drive  
14 more business to the dealership and how to more  
15 effectively leverage the RVTraderOnline.com selling  
16 tools."

17 Q. And are you familiar with this  
18 DealerDashboard e-newsletter?

19 A. I am not.

20 Q. Is this DealerDashboard e-newsletter  
21 related to your DealerDashboard.com business?

22 A. It is not.

23 Q. Is your DealerDashboard.com Web site  
24 affiliated with this DealerDashboard e-newsletter?

25 A. With the newsletter?

1 Q. Or with this RVTraderOnline?

2 A. I am affiliated as an affiliate to the  
3 prior companies of Dominion, who was AutoTrader.com.  
4 This surprises me. So I am affiliated -- have an  
5 affiliated agreement to co-market. Some of their  
6 product appears on my site.

7 Q. But you have not given them permission to  
8 call their newsletter Dealer Dashboard?

9 A. I have not.

10 Q. And before today you didn't know that  
11 there was a newsletter called Dealer Dashboard?

12 A. I did not.

13 Q. Okay.

14 (Deposition Exhibit 25 was marked for  
15 identification.)

16 BY MS. FINGUERRA-DUCHARME:

17 Q. Okay. I'm handing you Exhibit 25, which  
18 is a printout from May 3rd, 2008 from a Web site  
19 called dashboardspy.wordpress.com. Can you read for  
20 the record the -- what appears in the header of the  
21 first page of Exhibit 25?

22 A. "An auto dealer sales management  
23 dashboard."

24 Q. Yeah. Do you want to say it again?

25 A. Thanks. "An auto dealer sales management

1 dashboard."

2 Q. Okay. And if you'll see, it says, "The  
3 Dashboard Spy, March 5, 2006." And what does it say  
4 under that? Under the date, what does it say?

5 A. I think that's what I just read, "An auto  
6 dealer sales management dashboard."

7 Q. All right. And then under that, it says,  
8 "Filed under: Dashboard Screenshots." Can you read  
9 for the record what it says underneath that?

10 A. "This sales dashboard provides users with  
11 real-time financial information about their Sales,  
12 F&I, Fixed Operations, Accounting and Inventory  
13 profit centers. PDFs available at  
14 <http://www.dealerdna.com/pages/sales.html>."

15 Q. And that's similar to what -- the  
16 dealership services that you provide, right?

17 A. It is.

18 Q. And they're calling it "sales dashboard,"  
19 right? They're describing it as a "sales dashboard"?

20 A. Yes. Yes, the "sales dashboard," yeah.

21 Q. All right. If you turn to page 4 of  
22 Exhibit 25, can you read how this Web site describes  
23 "What is a Dashboard?"

24 A. I'm going to object as to relevancy,  
25 object as to expert on a definition of a dashboard.

1 Q. Okay.

2 A. "What is a Dashboard?" "Known by many  
3 names (enterprise dashboard, executive dashboard,  
4 digital dashboard, business dashboard, business  
5 intelligence dashboard, performance dashboard,  
6 balanced scorecard, kpi summary, data visualization,  
7 and so on...), it is basically a way for business  
8 users to get an at-a-glance understanding of metrics  
9 of importance to them. In addition to acting as a  
10 summarization device, the dashboard also serves to  
11 highlight specific data and allows the user to drill  
12 down and inspect specific items. It allows a  
13 browsing style of user interaction in addition to the  
14 usual menu based navigation. As such, the dashboard  
15 also represents a user interface design pattern that  
16 designers should study and understand. From the  
17 perspective of information technology staff, the  
18 dashboard often represents a consolidation of data  
19 from disparate data sources. The effort is usually  
20 considerable when it comes to the necessary  
21 extraction, transformation and presentation of the  
22 data."

23 I'm not certain what that means, but I  
24 read it.

25 Q. Okay. What -- what portion of this don't

1 you agree with as far as a definition of "What is a  
2 Dashboard" is concerned?

3 A. That's not my definition of a dashboard.  
4 That's not any published interpretation of a  
5 dashboard. A dashboard is -- is, as we represented  
6 in the definition of a dashboard, is published. This  
7 is some type of a slang in terms with regards to  
8 evolution and was not a slang in the first use of  
9 DealerDashboard.

10 Q. That's not what my question is, though.  
11 Is -- do you have -- do you have an issue with the  
12 fact that this is -- strike that.

13 Notwithstanding what dashboard may have  
14 meant back in 1999 --

15 A. Uh-huh.

16 Q. -- do you agree that this is a working  
17 definition today of dashboard?

18 A. No, I do not. I believe -- I believe that  
19 this is the writers of Dashboard Spy's definition,  
20 but, no, I --

21 Q. What -- what portion of this definition is  
22 not -- do you not agree with?

23 A. I don't understand any of it, ma'am.

24 Q. Okay. Do you not agree with the fact that  
25 a dashboard is "basically a way for business users to

1 get an at-a-glance understanding of metrics of  
2 importance to them"?

3 A. I would call that a spreadsheet.

4 Q. Okay. Isn't that what DealerDashboard  
5 does, though, your DealerDashboard?

6 A. Pardon?

7 Q. Didn't we discuss before how when you came  
8 up with the term "DealerDashboard," that part of it  
9 was so that you could have a way for a -- for a  
10 business -- can -- can have right in front of them an  
11 understanding of what's important to their business?

12 A. I don't think we termed it that way. I  
13 don't -- I don't -- I think I said that the original  
14 concept in developing the DealerDashboard is that  
15 they would -- they would be sitting there viewing the  
16 monitor as sitting in the driver's seat and looking  
17 at their future view of the automotive world.

18 Q. But the information that you're providing  
19 to them, the services on your dashboard,  
20 DealerDashboard.com is a place to go to find  
21 information, right, one central place to find  
22 information --

23 A. Correct.

24 Q. -- that's important?

25 A. I mean, it's one aspect of it. I mean,



1 it's a portal.

2 Q. Right.

3 A. It's a portal.

4 Q. Right. And that's consistent with how the  
5 dashboard is described here. Like, couldn't this  
6 definition of "What is a Dashboard" be used to  
7 describe the services that you provide on  
8 DealerDashboard.com?

9 A. Absolutely not.

10 Q. Why absolutely not? What -- what does not  
11 describe what you provide? "It allows a browsing  
12 style of user interaction in addition to the usual  
13 menu based navigation." You don't do that?

14 A. This -- this term looks like, to me, an  
15 interpretation of Apples 10.4 Genome Project where  
16 they describe their desktop and have named it  
17 Dashboard with the use of widgets. This looks like  
18 that's how they are using that term, that Apple has  
19 branded a product that they have called Dashboard.

20 That's the way I would interpret this,  
21 based on the Genome Project and Version 10.4 of  
22 Apple's operating system and their desktop, that's  
23 the interpretation I would get. And unless I could  
24 see some basis for their interpretation, that's how I  
25 would have to interpret that as based on Apple's

1 10.4.

2 Q. I'm not asking about Apple's, I'm  
3 asking --

4 A. Okay.

5 Q. -- about what you provide --

6 A. That's -- that's my answer, ma'am.

7 Q. I know, to my last question. But what I'm  
8 asking you now is, when we think about  
9 DealerDashboard.com --

10 A. Uh-huh.

11 Q. -- isn't it true that it's a way for  
12 business users to get an understanding of metrics of  
13 importance to them?

14 A. No.

15 Q. It's not?

16 A. No, it is not.

17 Q. Isn't that --

18 A. It is not.

19 Q. So tell me --

20 A. There are services on DealerDashboard in  
21 the automotive context, okay, where they would be  
22 able to gain sales and marketing key financial  
23 indicators as indicated in my -- in my -- but is it a  
24 graphical interface, which is what they're -- what  
25 they're speaking of here.

1 Q. I'm not talking about graphical  
2 interface --

3 A. That's -- that's what I --

4 Q. -- and I don't think that's what  
5 they're --

6 A. If I look at this, this looks like -- if I  
7 look at the -- at the shot, that looks like a  
8 graphical interface. By the way, I've spoken to this  
9 company. This looks like a graphical interface based  
10 on a spreadsheet and based on the Genome Project --  
11 Genome Project with Apple 10.4, and that's -- that's  
12 the way I would interpret that definition. And in  
13 no -- and in no way is that related to  
14 DealerDashboard, the brand, as I market it.

15 Q. Okay.

16 (Deposition Exhibit 26 was marked for  
17 identification)

18 BY MS. FINGUERRA-DUCHARME:

19 Q. Okay. I've marked for you Exhibit 26,  
20 which is a Web site printout from May 3rd, 2008 from  
21 www.dfsfin.com. Can you read for me what's in the  
22 header of Exhibit 26?

23 A. The header, "Private Policy Statement," is  
24 that what you're looking for?

25 Q. The "Diversified."

1 A. Oh, you mean at the top of the browser?

2 Q. Yeah.

3 A. "Diversified Financial Services - Portal."

4 Q. Okay. And this appears to be a "Privacy  
5 Policy Statement" for "Diversified Financial  
6 Services," right?

7 A. I agree.

8 Q. Okay. If you go to the second paragraph  
9 down, can you read what -- what Diversified Financial  
10 does?

11 A. Starting with "For" or --

12 Q. "We collect."

13 A. Okay. "We collect information volunteered  
14 by the consumer or dealer, such as customer account  
15 information or dealer information and/or site  
16 registrations.

17 "The information we collect is used for  
18 internal review and is then discarded.

19 "With respect to cookies: On Dealer  
20 Logins, we set a cookie that helps us determine on  
21 the Dealer Dashboard pages your unique dealer  
22 identification number."

23 Q. Okay. So is -- were you aware of  
24 Diversified Financial's use of the term "Dealer  
25 Dashboard"?

1 A. I was not.

2 Q. All right. Is -- is Diversified  
3 Financial's use of Dealer Dashboard related to  
4 DealerDashboard.com business?

5 A. To the best of my knowledge, it is not.

6 Q. But they're using it to describe a --  
7 some -- some of their services?

8 A. Direct competing services. I'm -- I'm  
9 assuming Diversified Financial does deal  
10 with floorplan financing.

11 Q. I'm sorry, what was that?

12 A. I'm assuming Diversified Financial  
13 Services does dealer floorplan financing. I'm not  
14 familiar with them. Yeah, DFS, they do. So they  
15 will receive a cease and desist.

16 Q. Okay.

17 (Deposition Exhibit 27 was marked for  
18 identification.)

19 BY MS. FINGUERRA-DUCHARME:

20 Q. I have just handed you Exhibit 27, which  
21 is a printout from download.oracle, o-r-a-c-l-e,  
22 .com. Mr. Dalton, can you please read for me what  
23 the header is?

24 A. "Bookshelf v7.8 Using Siebel Dealer  
25 Dashboards (Dealer)."

1 Q. And, again, in prominent bold type in the  
2 center?

3 A. "Using Siebel Dealer Dashboard (Dealer)."

4 Q. Okay. And can you read for me what -- the  
5 first -- the first sentence?

6 A. "Siebel Dealer provides dealer employees  
7 with dashboards that allow them to view the most  
8 important information that they need for their work  
9 on one screen. The following dashboards are  
10 available."

11 Q. And is that similar to some of the  
12 services that you provide under DealerDashboard in  
13 that -- in the broad sense that you allow users to  
14 view important information in one place?

15 A. You know, I can't say whether that's --  
16 that is or isn't because Siebel does do things for  
17 dealerships and they -- they -- I thought they had  
18 ceased using DealerDashboard, and I'm not sure how  
19 old this thing is.

20 Q. Well, my question for you, though, is,  
21 let's put -- let's replace the word "Siebel Dealer"  
22 and instead let's say DealerDashboard. Would it  
23 be -- would it be accurate for me to say --

24 A. Provides dealer -- DealerDashboard  
25 "provides dealer employees with dashboards that allow

1 them" -- no, absolutely not. I don't provide any  
2 dashboards to anyone.

3 Q. Okay.

4 A. The dashboard is the visit to  
5 DealerDashboard.com.

6 Q. But that's the -- okay. So if -- if it's  
7 not -- is it that the DealerDashboard.com allows them  
8 to view the most important information that they need  
9 for their work; is that accurate?

10 A. I wouldn't say so. It provides -- it  
11 provides a portal to -- to valuable information.  
12 I -- you know, I -- I understand, based on your  
13 opposition, that you have taken the position that my  
14 site is a dashboard as that word has evolved based on  
15 the Genome Project and Apple with the graphical user  
16 interface, and that's what they're referring to. My  
17 site is not a graphical user interface. It's not  
18 designed to be a graphical user interface. It's  
19 designed to be a view of the future world in the  
20 automotive industry based on the term  
21 "DealerDashboard."

22 Q. Okay. Well, if you could look in the  
23 middle here where it says, "Note," can you also read  
24 what that says?

25 A. "The Today's Activities only displays

1 certain types of activities, as described in Changing  
2 Types of Activities Displayed in the Dealer  
3 Dashboard."

4 Q. So there's a -- there's a Dealer Dashboard  
5 that they're referring to, okay.

6 (Deposition Exhibit 28 was marked for  
7 identification.)

8 BY MS. FINGUERRA-DUCHARME:

9 Q. I'm handing to you Exhibit 28, which is a  
10 13-page printout from [www.enterprise-dashboard.com](http://www.enterprise-dashboard.com).  
11 If you could read to me what is -- what's the -- sort  
12 of the large font title of this Web site.

13 A. Objection to relevancy, but -- you're  
14 talking about the bold print at the top?

15 Q. Yeah.

16 A. "Dashboards By Example."

17 Q. And then what does it say under that?

18 A. "What's on your Dashboard?"

19 Q. And if you look below, do you see the term  
20 "Dashboard"? It appears twice. The second  
21 appearance of "Dashboard" that's in bold, large font.

22 A. I do.

23 Q. Can you read for me what it says under  
24 that?

25 A. "Ads by Google."



1 Q. The second one?

2 A. "From a simple excel dashboard to a fully  
3 integrated enterprise reporting suite, the Business  
4 Dashboard is being quickly adopted as the new face of  
5 Business Intelligence. It has a rapidly growing role  
6 in BI reporting and analysis."

7 Q. Is this Business Dashboard at all related  
8 to DealerDashboard.com business?

9 A. It is not.

10 Q. Okay. Is -- so your DealerDashboard.com  
11 is not affiliated at all with this Business  
12 Dashboard?

13 A. That's correct.

14 Q. If you could -- okay.

15 (Deposition Exhibit 29 was marked for  
16 identification.)

17 BY MS. FINGUERRA-DUCHARME:

18 Q. Okay. I'm handing you Exhibit 29, which  
19 is a printout from May 3rd, 2008 from the Web site  
20 www.goallinesolutions.com. Can you please read for  
21 me what the header says here?

22 A. "Dealer Dashboard - Goalline Solutions  
23 Inc."

24 Q. Okay. And then can you read for me what  
25 it says under -- it says, "About," "Products,"

1 "Solutions," "My Account," under that line, what does  
2 it say?

3 A. "Dealer Dashboard," "If you can't measure  
4 it, can't manage it."

5 Q. And can you read the next paragraph?

6 A. "Dealer Dashboard Key Importance  
7 Indicators provide the dealer and service manager  
8 with visibility to the crucial numbers that drive the  
9 performance of the service department. You have the  
10 ability to set target goals for the average labor  
11 dollars per" --

12 Q. You can stop there.

13 A. Okay.

14 Q. Are you familiar with Goalline Solutions,  
15 Inc.?

16 A. I am not.

17 Q. Okay. Is this Dealer Dashboard related to  
18 your DealerDashboard.com business?

19 A. It is not. And it looks like it was  
20 copyrighted in 2006, and they will receive a cease  
21 and desist.

22 Q. Okay.

23 A. And they are obviously trying to exploit  
24 my brand.

25 Q. Okay.

1 (Deposition Exhibit 30 was marked for  
2 identification.)

3 BY MS. FINGUERRA-DUCHARME:

4 Q. Okay. I'm handing you Exhibit 30, which  
5 is a printout from ca.denon, d-e-n-o-n, .com, printed  
6 on May 3rd, 2008. Can you please read for the record  
7 what's in the header?

8 A. "Denon Canada/Dealer Dashboard."

9 Q. Okay. And can you read for me the -- in  
10 the center of the page, it says --

11 A. "Denon Dealer Dashboard." "The Dealer  
12 Dashboard is the easiest way for Denon dealers to get  
13 the latest information on Denon products, events,  
14 company information and more. As a Denon dealer, the  
15 Dashboard provides you with all kinds of product  
16 related items such as downloads, images, sell sheets,  
17 and more."

18 Q. And then there appears to be a "Dealer  
19 Dashboard Log-In" --

20 A. Correct.

21 Q. -- where you'd have to enter a password?

22 A. Correct.

23 Q. Okay. I know we had mentioned Denon  
24 before with --

25 A. Yeah. It's -- it's non-competing in the

1 automotive industry, although Marantz, their  
2 division, it does compete.

3 Q. Okay. So you were familiar with Denon's  
4 use of Dealer Dashboard?

5 A. I am familiar with their use of Dealer  
6 Dashboard.

7 (Deposition Exhibit 31 was marked for  
8 identification.)

9 BY MS. FINGUERRA-DUCHARME:

10 Q. Okay. I'm handing you a printout of --  
11 from dashboardonline.com, printed May 3rd, 2008. Are  
12 you familiar with this company?

13 A. I am.

14 Q. How so?

15 A. This is the company that -- that I told  
16 you has anonymously registered their Web site, unable  
17 to get in touch with them. I feel it's a direct  
18 violation of the trademark DealerDashboard, and I  
19 think it's in direct violation of the trade dress of  
20 DealerDashboard because they are in direct  
21 competition with DealerDashboard.

22 Q. When you say "trade dress," you meant the  
23 picture that we spoke about before?

24 A. Right. I believe it's intentional.

25 Q. Okay.

1           A.     The phone -- the phone number is  
2 unregistered. There has been no response to cease  
3 and desist at the e-mail they provide. And I've  
4 been unable to locate the owners. I've contacted  
5 their hosting company. The hosting company refused  
6 to reveal the information.

7                     (Deposition Exhibit 32 was marked for  
8                     identification.)

9 BY MS. FINGUERRA-DUCHARME:

10          Q.     Okay. I've just handed you Exhibit 32,  
11 which is a printout from the Web site us.marantz,  
12 m-a-r-a-n-t-z, .com, printed on May 3rd, 2008.  
13 Underneath the graphics here, can you -- can you read  
14 what it says?

15          A.     "Welcome to the Marantz Dealer Dashboard!"

16          Q.     Yeah.

17          A.     They are -- they are -- if you'll look in  
18 the bottom right-hand corner, "2008 D&M Holdings."

19          Q.     Yeah.

20          A.     Denon and Marantz are the same  
21 organization. They deal in audio equipment. They  
22 are a non-compete in the automotive industry, except  
23 they do offer car audio. I have sent a  
24 cease-and-desist letter.

25          Q.     Okay. Can you read for me what it says in

1 the center?

2           A.    "The Dealer Dashboard is the easiest way  
3 for Marantz dealers to get the latest information on  
4 Marantz products, events, company information and  
5 more. As a Marantz dealer, the Dashboard provides  
6 you with all kinds of product related items such as  
7 high resolution images, sell sheets, and corporate  
8 identity images."

9           Q.    Have they responded to your  
10 cease-and-desist letter?

11          A.    They have not.

12          Q.    When did you send that letter?

13          A.    I sent them another one just, like, two  
14 days ago, because I did a search prior to this. I  
15 sent a couple cease and desist and a couple that have  
16 not -- I haven't sent yet that are on my agenda to  
17 send.

18                   Just prior to me coming to this  
19 deposition, I did the same search that you did and  
20 used it as -- like I always do and -- to maintain the  
21 brand, is how Honda got the cease-and-desist letter  
22 because they showed up in those search engines, which  
23 they no longer do, as far as I know.

24                   (Deposition Exhibit 33 was marked for  
25 identification.)

1 BY MS. FINGUERRA-DUCHARME:

2 Q. I'm handing you Exhibit 33, which is a Web  
3 site printout from www.mcintosh, m-c-i-n-t-o-s-h,  
4 labs, l-a-b-s, .com, printed on May 3rd, 2008.

5 A. This is also a sister company of Denon and  
6 Marantz.

7 Q. McIntosh is related to Denon?

8 A. Denon and Marantz, yes.

9 Q. And how -- how are they related?

10 A. It's the same company, D&M Holdings.

11 Q. Okay. Can you tell me what their product  
12 is called, their services are called?

13 A. Well, it looks like they use the same  
14 Dealer -- what they call Dealer Dashboard for their  
15 electronics dealers, that's the way it appears to me.

16 Q. And it says "McIntosh Dealer Dashboard,"  
17 right?

18 A. Correct.

19 Q. It said that a few times?

20 A. Right. They're a non-compete in the  
21 automotive industry.

22 (Deposition Exhibit 34 was marked for  
23 identification.)

24 BY MS. FINGUERRA-DUCHARME:

25 Q. Okay. I've just handed you what's been

1 marked as Exhibit 34, which is a printout from  
2 findarticles.com. And it is a press release from  
3 2004, that's Subaru Australia. Can you please read  
4 the second sentence of this press release?

5 A. Are you talking about from "San  
6 Francisco"?

7 Q. The -- in the next paragraph.

8 A. "Plumtree Software"?

9 Q. Yeah, but just start with the second  
10 sentence.

11 A. "'The dealer dashboard,'" is that what  
12 you're talking about?

13 Q. Yes.

14 A. The second paragraph. "'The dealer  
15 dashboard in the portal has been a huge win for  
16 Subaru Australia because it gives dealers a central  
17 point of reference for key metrics and trends that  
18 they couldn't see before.'"

19 Q. Okay. Actually before that, I was  
20 thinking this second sentence.

21 A. Oh, okay. "The dealer dashboard has  
22 streamlined" --

23 Q. Yep.

24 A. -- "communication between Subaru and its  
25 dealer network so that each dealer has direct access



1 to the latest metrics such as inventory, order status  
2 and promotional details. As a result, dealers are  
3 able to target improved customer service, while  
4 effectively representing the Subaru brand."

5 Q. Is this dealer dashboard at all related to  
6 DealerDashboard?

7 A. It is not.

8 Q. Okay.

9 A. I would like to note this is an old press  
10 release from May of 2004. They did receive a cease  
11 and desist. To the best of my knowledge, they no  
12 longer use those terms. However, a cached press  
13 release may still appear in the results.

14 Q. Okay.

15 (Deposition Exhibit 35 was marked for  
16 identification.)

17 BY MS. FINGUERRA-DUCHARME:

18 Q. Okay. I have just handed you Exhibit 35,  
19 which is a printout from blog.furnishweb.com,  
20 printed on May 3rd, 2008. If you -- you see a graph  
21 on there, sort of a pie chart?

22 A. Uh-huh.

23 Q. Can you read what it says next to the pie  
24 chart?

25 A. "Dealer Dashboard Updates." "On the

1 Dealer Dashboard there are two new pieces of  
2 information; Collections Year-To-Date and Top Sellers  
3 YTD."

4 Q. That's good. And then on the second page  
5 of Exhibit 35, if you can read the -- the first  
6 sentence?

7 A. There is also a new link on the Dealer  
8 Dashboard to Sales Tools."

9 Q. Okay. Is this DealerDashboard related to  
10 the DealerDashboard.com business?

11 A. It is not.

12 Q. Okay. Before today, did you know of the  
13 use of DealerDashboard in connection with these  
14 services on Exhibit 35?

15 A. With FurnishWEB? No. This is the first  
16 time I have seen this --

17 Q. Okay.

18 A. -- before. And I'm not certain that they  
19 are involved in the automotive industry. I don't  
20 know if they are or they aren't.

21 Q. Okay.

22 A. It looks like furniture, Bassett, looks  
23 like -- I don't know -- Rivers Edge, I want to say  
24 they're a furnishing company.

25 MS. FINGUERRA-DUCHARME: Do you need

1 another break?

2 THE WITNESS: No, I'm fine.

3 (Deposition Exhibit 36 was marked for  
4 identification.)

5 BY MS. FINGUERRA-DUCHARME:

6 Q. Okay. I've just handed you Exhibit 36.

7 Can you please describe -- do you recognize this  
8 document?

9 A. I do.

10 Q. Can you describe it for the record?

11 A. It's an affidavit "In Response To  
12 Opposer's First Set of Interrogatories."

13 Q. We can go to response number 8, which  
14 begins on page 2. This, I believe, is in response to  
15 the question with how you developed the mark. You  
16 assert that "The Internet was in its infancy. The  
17 applicant was involved in ground floor automotive  
18 Internet development."

19 Can you explain to me what you meant by  
20 being on the ground floor?

21 A. The -- the '90s was the emergence of the  
22 Internet. The automotive industry was probably the  
23 first industry to fully utilize the aspects of -- of  
24 the Internet with regards to, you know, providing  
25 their inventory shopping online and things like that.

1 I worked as a consultant to dealerTools,  
2 who was the former national sales manager for  
3 Autoweb.com. Autoweb was the first online -- maybe  
4 not the first online shopping, but the first online  
5 shopping that became nationally known and nationally  
6 utilized.

7 Back at that time, there wasn't a thing  
8 known as a BlackBerry, and yet the automotive  
9 industry provided a way to allow salespeople, while  
10 anywhere, to receive text messages from leads that  
11 they would receive with regards to sales. I don't  
12 recall the -- the device that it was, but it -- it  
13 looked like a small pager that had text lines by  
14 Research In Motion.

15 So I was involved in developing the sales  
16 channel for the first precursor to BlackBerry by  
17 Research In Motion. And by that, that's what I  
18 meant, I was -- I was involved in the ground floor  
19 grass roots.

20 Prior to me developing DealerDashboard,  
21 there had been only one national retail on the line  
22 Web conference in the whole U.S., and I attended the  
23 second one. I wasn't at the first one. So that's  
24 what I meant was that I was on the ground floor --

25 Q. Okay.

1           A.    -- of that.

2           Q.    Okay.  When you talk about how you  
3 "conceptualized an automotive dashboard with the  
4 gages and tools to make informed decisions," the way  
5 all those third parties were using the terms,  
6 weren't -- aren't their uses consistent with how you  
7 describe -- what your original concept was back in  
8 1999?

9           A.    It -- if you would interpret that that is  
10 true, then I would have to assert we were the first  
11 in use of that name.

12          Q.    Right.  So you were the first one to start  
13 to use the term "dashboard" and "DealerDashboard" in  
14 particular --

15          A.    Correct.

16          Q.    -- to describe a place -- one central  
17 place on the Internet to get information?

18          A.    Correct.

19          Q.    And that is the way these third parties  
20 are also using the term that we -- that we saw today?

21          A.    I think they're referring to as how the  
22 term "dashboard" has evolved, you know, with the use  
23 of the graphical user interface.  Because it sounds  
24 like to me that's what they're -- they're describing.  
25 However, it would be my argument to use that term

1 "DealerDashboard" would be marketing -- marketing  
2 confusion -- market confusion with regards to my  
3 brand DealerDashboard and the first in use. Does  
4 that answer your question?

5 Q. It does.

6 A. Okay.

7 Q. I mean, you'd agree -- would you agree  
8 with me that a dashboard, the term "dashboard," is --  
9 it's a central place to find useful information?

10 A. You know, once again, I would have to say  
11 a dashboard in the automotive industry, as I have  
12 interpreted dashboard, has to do with an instrument  
13 panel. The dashboard, and they -- what you're  
14 referring to, that the computer has -- the computer  
15 industry has slang, which there is -- there is no  
16 reference to it in any encyclopedias or any -- any  
17 dictionaries, but as slang, they have -- I think it  
18 refers.

19 And I think, based on my research on the  
20 history, I think you'll find that around 2004, when  
21 the Genome Project came out with an Apple utilizing  
22 that in Version 10.4, and they called their desktop  
23 on their computer a dashboard, you will find that it  
24 has evolved to include what -- what you're talking  
25 about.

1           Q.    Okay.  So -- so right now -- so right now  
2 the term -- when -- strike that.

3                   In your view, when you first used the  
4 mark -- or when you first used the word "dashboard,"  
5 it was unique when you first used it?

6           A.    I think I was the original --

7           Q.    Okay.

8           A.    -- originator.

9           Q.    Right, okay.  And then others have started  
10 to use it?

11          A.    Right.  And a lot of those individuals who  
12 have used it, I believe, is as a direct result of  
13 exploiting my brand in the automotive industry.

14          Q.    Well -- but you just described this advent  
15 when Apple came out with the dashboard for its  
16 terminal?

17          A.    Right.

18          Q.    And that there has been an evolution of  
19 the term "dashboard" --

20          A.    Dashboard, correct.

21          Q.    -- to mean, now, something different from  
22 when you may have first started to use it?

23          A.    That's correct.

24          Q.    Okay.  So there is this secondary  
25 meaning -- and I'll -- I'll strike that because

1 secondary meaning has a -- has a meaning in trademark  
2 words. So let's just say there's -- there's another  
3 meaning of the word "dashboard" that's prevalent now  
4 on the Internet?

5 A. With regards to a graphical user  
6 interface, yes. With regards to the terms -- and I  
7 make no claim to the -- to the independent rights to  
8 dashboard or the independent rights to a dealer. My  
9 brand is DealerDashboard.

10 Q. But what about that e-newsletter for the  
11 RVTraders, that has nothing to do with the graphical  
12 interface?

13 A. Sure it did. It had to do with -- with RV  
14 dealers.

15 Q. Right, but not with -- you're talking  
16 about software.

17 A. And that's what they were talking about.  
18 That was my interpretation.

19 Q. So in your -- in your answer to the  
20 interrogatories on page 3 of Exhibit 36, you say  
21 that --

22 A. Page 3, what -- what question?

23 Q. I haven't asked a question yet. On  
24 Exhibit 36, page 3 --

25 A. Oh, I'm sorry.



1           Q.    -- you say that, "The applicant wishes to  
2 note that opposers claim that dashboard is generic in  
3 nature: Was not the case when applicant selected the  
4 term."

5           A.    Correct.

6           Q.    So do you admit that it's -- that it is  
7 the case now?

8           A.    No. I admit that the -- that the opposer  
9 has claimed that because there has been an evolution  
10 in the term "dashboard," that somehow makes  
11 DealerDashboard generic.

12          Q.    Okay.

13          A.    That's -- that's what I was acknowledging  
14 there.

15          Q.    And you think that dealer -- that your  
16 success may have contributed to this evolution of the  
17 term "dashboard"?

18          A.    Especially in the automotive industry,  
19 there's no doubt about it.

20          Q.    Okay. So you -- you admit that the term  
21 "dashboard" has evolved since you first started to  
22 use it? That it no longer just means --

23          A.    No.

24          Q.    -- a console on a car?

25          A.    No. I think some people have made it

1 slang. Has it evolved to the -- to the point of  
2 being generic? No.

3 I think it has evolved -- at this stage,  
4 it has evolved to the -- to the point to those in the  
5 industry who are familiar with the Genome Project,  
6 who was familiar with Apple 10.4, and who was  
7 familiar with the graphical user interface, the term  
8 "dashboard" has been used as a slang. Has it evolved  
9 to the point to where the average consumer knows that  
10 dealer -- that dashboard refers to this? No.

11 Q. And are you -- but you have no evidence  
12 that the average consumer, when they hear  
13 DealerDashboard, they think of you?

14 A. No, but I do have evidence that those in  
15 the automotive industry know DealerDashboard and have  
16 attempted to exploit that brand.

17 Q. And what's your evidence that people in  
18 the automotive industry know DealerDashboard?

19 A. Well, just based on the attempts to  
20 utilize it and attempts that they cease and desist  
21 from using it.

22 Q. And which company is this? This was that  
23 -- the one that you can't --

24 A. Nowcom, for one. There have been several.  
25 I mean, there has been so many that -- that I don't

1 even recall all of them. BMW was one, they stopped.

2 Honda was one, they stopped. You know, they're --

3 Q. They just -- they just stopped using the  
4 term "DealerDashboard," as far as you know?

5 A. They may use it internally. They have  
6 stopped providing it in -- in the --

7 Q. In --

8 A. -- as appearing in the search engines.

9 Q. In search, okay.

10 A. And as far as I -- I asked them to --

11 Q. Are you talking about Honda or BMW now?

12 A. Both.

13 Q. Both, okay. I just want to be clear.

14 A. But as far as I know, they both have  
15 stopped using the brand.

16 Q. Okay. Why don't we take a short break. I  
17 just want to flip through your responses to the  
18 document requests and see if I had any questions  
19 about the documents, make sure I understand them all.  
20 If not, I might want you to just quickly walk me  
21 through what they are, and then I think we're  
22 probably going to finish.

23 A. Okay.

24 (A recess was taken from 3:22 to 3:29.)

25 MS. FINGUERRA-DUCHARME: Back on the

1 record.

2 (Deposition Exhibit 37 was marked for  
3 identification.)

4 BY MS. FINGUERRA-DUCHARME:

5 Q. So we have marked as Exhibit 37  
6 "Applicant's Response To Opposer's First Set  
7 of Requests for Documents and Things." So if we  
8 could, most of this stuff I understand what it is.

9 If maybe we can just quickly go through  
10 some of the stuff in the middle, and I'll direct you  
11 to the right page, and you can just give me a quick  
12 explanation. If I have follow-up questions, I'll ask  
13 you. So maybe if you'd turn to what you had labeled  
14 Exhibit I, which is maybe about a third of the way  
15 through.

16 A. Okay.

17 Q. So can you explain to me what these few  
18 pages are?

19 A. On Exhibit I, I believe the -- you asked  
20 me to --

21 Q. I actually have the request, if that would  
22 help, also.

23 A. Okay. Thanks. I think --

24 Q. Where do you see in -- in here -- okay.

25 Actually --

1           A.    I tried to do them in order.  Okay.  It  
2 would be -- it has to be on the first page, I guess.  
3 I must have messed up.

4           Q.    I feel better now because I was trying to  
5 connect --

6           A.    Oh, here it is.  Exhibit A -- is that A  
7 and I, "of record and available at," number 9,  
8 question number 9?

9           Q.    Right.  Well, that seems to be referring  
10 to the PTO.  Let's see the number.

11          A.    That's what happens when you're dealing  
12 with a layman.

13          Q.    It has made it an exciting challenge,  
14 Mr. Dalton.  All right.  Now, 9 is all documents  
15 regarding the earliest use.

16          A.    Okay.  That's -- I was trying to show you  
17 all the services that I was offered at the earliest  
18 use with -- and --

19          Q.    Oh, I see.  So it's A through --

20          A.    Yeah -- well, that's kind of -- this is a  
21 solicitation for people who would want to come to  
22 work for the -- for the organization.

23          Q.    Okay.

24          A.    And it basically tells the different  
25 products that were available at -- at its earliest

1 use.

2 Q. I see, okay.

3 A. It's kind of what I had in mind when I  
4 presented that to you.

5 Q. Okay. Great. And then the -- the next  
6 page then, this is all still just sort of about the  
7 services that you offer?

8 A. Okay. Now, is this all "I" still? Yeah,  
9 okay. What this does is, these are the screenshots.  
10 I think in your opposition, you had some questions  
11 with regards to the sales and marketing tools and  
12 things like that, and this shows where they can "Run  
13 Aged Inventory Lists" on the screenshot, and -- and  
14 this one page shows how they could get a return on  
15 investment of the vehicle.

16 Q. We're talking, for the record, where it  
17 says, "Picture to upload (640 pixels wide  
18 recommended): Browse...D2D vehicle detail form."

19 A. Right.

20 Q. What is this form?

21 A. This would be a part of the key financial  
22 indicators to a dealership, how they would perform  
23 with regards to the return on investment. Actually,  
24 that would be the -- what I'm showing here, it's the  
25 listing of a -- of a vehicle for sale. And then the

1 next page would be where it would detail and you  
2 could do the return on investment.

3 Q. Okay. Now, just to -- just to be clear  
4 then, if -- and I know you had mentioned before that  
5 so far a dealership has not signed on yet for this  
6 service. If they did, they would get on their  
7 screen, their computer screen, all of this type of  
8 information?

9 A. Correct.

10 Q. Okay. So isn't that similar to what we  
11 were talking about before with dashboard, with this  
12 involved term "dashboard"?

13 A. Actually, that's called a dealer-to-dealer  
14 auction, and it just provides financial tools. And  
15 it's marketed under the Web site DealerDashboard.

16 Q. Okay. And I understand that, but this  
17 whole concept of providing useful financial  
18 information to a dealer in one place through your Web  
19 site DealerDashboard.com, isn't that consistent with  
20 that definition we were talking about before with  
21 dashboard?

22 A. If it is, I would -- you know, I think  
23 that's objective because, like I said, I think the  
24 term has evolved to include a graphical user  
25 interface. That being said, obvious first use.

1           Q.    And that being said, putting all of that  
2 aside, that the term had been used with this  
3 graphical interface, you were the first guy to come  
4 out with the term, putting all of that aside, there's  
5 an evolved meaning of the term "dashboard" that  
6 represents on the Internet, on your computer, a way  
7 to have a lot of information that was in different  
8 places, very important information, in one spot at  
9 one time. And this -- this page, to me, seems to be  
10 providing that information.

11          A.    To a specific targeted market of  
12 automobile dealers, either the full and complete term  
13 "DealerDashboard."

14          Q.    I understand that. But you agree with me  
15 that -- that -- let's say that this wasn't your --  
16 this wasn't your product. This was me, I'm creating  
17 my own business?

18          A.    Uh-huh.

19          Q.    And this is going to be what I sell to  
20 somebody. You could call this -- this would fall  
21 underneath that evolved definition of dashboard? If  
22 I was to provide somebody the service --

23          A.    I would have to disagree with that because  
24 the -- the way the term as you're claiming has  
25 evolved since 2004, a dashboard has to do with an



1 analysis function of a lot of different variables and  
2 then providing a graphical display of, you know, some  
3 type of a performance or some type of a measurement  
4 or something like that, this is basically a  
5 calculation of simple -- simple math.

6 Q. And just -- just so you understand for the  
7 record, by the way, because I know that you're not  
8 going to be represented by a lawyer going forward,  
9 that I'm not here as a testifying witness, so  
10 anything that I say, it's not any kind of a -- when  
11 I, you know --

12 A. I did catch that. Thank you, though.

13 Q. Okay. Just that, you know, whether or not  
14 you're the first one to have used the mark, I want to  
15 make clear that I'm saying, assuming arguendo, okay?

16 A. Okay.

17 Q. All right.

18 MR. DAMERON: She hasn't been sworn or  
19 anything.

20 MS. FINGUERRA-DUCHARME: I'm trying to get  
21 him to focus on the other half of the question,  
22 so --

23 BY MS. FINGUERRA-DUCHARME:

24 Q. So the next few pages, this is all sort of  
25 examples of what this dealer-to-dealer interface

1 would be like?

2           A.    The -- are you looking at service  
3 department and expense breakdown?

4           Q.    I was looking at the "D2D vehicle detail  
5 form Lot #2"?

6           A.    Yeah, that's -- that's all part of the --

7           Q.    Okay. Then the next page is 0H0001, 2,  
8 1992 Dodge Caravan (Minivan)?

9           A.    Oh, that shows a -- that's a screenshot of  
10 a listing of a particular vehicle to how it would  
11 look to a dealer.

12          Q.    Okay. And look at the next page, "Used  
13 Inventory Management System!"

14          A.    Right. That gives you aging reports, how  
15 long a car is in inventory.

16          Q.    And, again, this would be for if a dealer  
17 was to engage your -- what -- what do we call these  
18 services?

19          A.    That's the dealer-to-dealer or D2D  
20 wholesale online auction.

21          Q.    Okay. And then "Service Department  
22 Expense Breakdown"?

23          A.    Yeah. This is part of my independent  
24 financial consulting that I do for dealerships. And  
25 basically these are, like, the forms I would use to

1 provide them the various information with regards to  
2 the sales, service, parts department.

3 Q. Okay.

4 A. Because I believe you had a question on  
5 whether I was even engaged in that activity --

6 Q. Right.

7 A. -- and I was trying to demonstrate that --

8 Q. Okay.

9 A. -- yes, indeed, I was.

10 Q. And that's what all these blank forms then  
11 are?

12 A. Correct.

13 Q. All right.

14 A. They're -- they're tools that I would use  
15 to analyze a dealer.

16 Q. Okay. What about this Exhibit J, the  
17 "Confidential Application For Floorplan Line of  
18 Credit"?

19 A. Yeah, that -- I think you had asked for  
20 any customers or something like that who had utilized  
21 my services --

22 Q. Right.

23 A. -- under the brand DealerDashboard.

24 Q. Right.

25 A. And as you can see, this is an application

1 with the logo DealerDashboard at the top, with the --  
2 identifying it as DealerDashboard and the address.  
3 And then this would be the application that a dealer  
4 would submit to me if they were interested in using  
5 floorplan services. And as you can see, this is  
6 branded DealerDashboard, okay, although I use a  
7 third-party vendor to do their financing. So this is  
8 faxed to me. I review it through initial  
9 underwriting and compilation of -- sort of like a  
10 loan originator.

11 Q. Right.

12 A. And then -- then send it to a lender once  
13 it's a complete package.

14 Q. And when you say you're branding, you're  
15 branding it with the -- the design mark, the  
16 DealerDashboard.com?

17 A. Yeah.

18 Q. Okay. Now, when you -- so do you just  
19 help these guys get money for their floorplans, or do  
20 you actually go in and advise them as to how to set  
21 the cars up in the showroom type thing?

22 A. Well, I mean, I do offer them those  
23 services, but -- but today I have just arranged for  
24 them to get half a million dollar line of credit and  
25 a million dollar line of credit.

1           Q.    All right.  So what is it, that you back  
2 them?  I mean, how does that -- why -- why is it that  
3 they need to go through you to get the credit?

4           A.    Well, they -- they would go and search for  
5 floorplan financing as an automobile dealership.  And  
6 as an automobile dealership, you would find  
7 DealerDashboard as one of the first to come up.  And  
8 which is why I think some of these other financial  
9 companies are particularly using me, I mean, trying  
10 to get listed under DealerDashboard because I am  
11 one -- one of the -- you know, if you -- if you type  
12 in floorplan financing, you'll find that I'm one of  
13 the first ones to pop up.

14          Q.    Right.

15          A.    So they would go there and then they would  
16 click on a link and it would take them to that  
17 section of DealerDashboard that deals with floorplan  
18 financing, and then there's a -- there's a section  
19 where they would click on apply now, and they would  
20 download a PDF of instruction and the application.  
21 They'd actually have to download that, they can't do  
22 it online, because I need some -- to put the package  
23 together, I need their dealer license, their  
24 incorporation documents and things like that --

25          Q.    Right.

1           A.    -- a complete loan package to submit. So  
2 they would submit that to me via fax, then I compile  
3 it and send it to a third-party vendor. And a  
4 third-party vendor, I provided you their name and so  
5 forth, and even an e-mail from --

6           Q.    Yeah, I think we're going to get to that.

7           A.    Okay -- from them. And they actually  
8 underwrite it. And once they underwrite it, I get  
9 initial commission for -- for the account and then a  
10 perpetual percentage of the amount that they actually  
11 do floor.

12                   So if -- if a deal dealer has \$250,000  
13 worth of floorplan and never uses it, I'd get zero,  
14 okay? But if they get -- have \$250,000 in floorplan  
15 and utilize that floorplan by going out and buying  
16 cars at an auction and then having the lender  
17 actually pay for those cars, and then they have a --  
18 it's short-term financing, sort of like payday  
19 lending.

20           Q.    Right.

21           A.    I mean, a kind of hefty fee, but basically  
22 when their inventory is -- is sitting on the  
23 dealership floor and it's through this vendor, I'm  
24 receiving a commission.

25           Q.    Okay. All right. So this was a customer

1 that had used you to help them get their line of  
2 credit?

3 A. I'm pretty sure they're a customer. Let's  
4 see. Yes, they are.

5 Q. Okay. So what --

6 A. That was the most recent one. Yeah, I  
7 think you had asked for the most -- most recent.

8 Q. So what are -- what are these next  
9 documents from VistaPrint?

10 A. I think you asked what I had done in the  
11 way of advertising, and this would be printed  
12 materials. I think there's some return addresses  
13 with the brand, yeah, and there's a sample of the  
14 return address, the brand, DealerDashboard, and then  
15 there's -- there's some -- also some --

16 Q. Oh, I see, this is your return label. I  
17 got you.

18 A. Right, some fliers for the floorplan  
19 financing. I think I made you a copy -- yeah --

20 Q. Oh, now I see it.

21 A. -- if you look there, there's a --

22 Q. Okay.

23 A. Yeah. The front and back of the postcard  
24 mailer I do.

25 Q. Oh, I see. Oh, I see. That's -- that's

1 what this is, this is the postcard that you sent out  
2 to advertise your services for the floor?

3 A. (Nodding head.)

4 Q. Okay. You can see how me just looking at  
5 this, I would have no idea what this was, so -- all  
6 right. Great. And then you ordered shirts. I see  
7 you're wearing one today?

8 A. Right. And that's where I, you know --

9 Q. Why did you send me a picture of yourself?

10 A. You asked for representative samples of  
11 advertising materials that were --

12 Q. I love it. So you took a picture of  
13 yourself?

14 A. Actually, my grandgirl took that picture  
15 and I just, you know, sent it to you.

16 Q. That's great. I looked at it and I  
17 said, why did he send me this? When you walked in  
18 the door, it made it easy for me to identify you,  
19 so --

20 A. Yeah, I think you asked for representative  
21 samples.

22 Q. I did.

23 A. And --

24 Q. Yes.

25 A. And, you know, I showed you --



1 Q. It is. You're a walking billboard, so --  
2 okay. What about this next document, November 30th,  
3 1999, Michael Mason & Co. Ltd.?

4 A. That's a press release, which was  
5 actually done sometime after I actually had the  
6 service, because I -- I had the service from the  
7 beginning. But it's basically them acknowledging,  
8 appointing me to the exclusive distributor in  
9 the United -- well, appointing DealerDashboard.com  
10 the exclusive distributor of the -- the  
11 dealer-to-dealer auction.

12 Q. Okay. And then --

13 A. I think you asked for types of agreements  
14 I had with third-party vendors.

15 Q. Okay.

16 A. So I basically just provided you with a  
17 blank copy of the -- the agreement I have with the  
18 floorplan company, which is Dealer Services Company,  
19 and they're -- they are backed by Tenneco, huge in  
20 the automotive industry. And I think the next one is  
21 Innova -- Inno -- Innoline (sic) or whatever,  
22 Innovat --

23 MR. DAMERON: Innovation.

24 THE WITNESS: InnovationLine, is that it?

25 MS. FINGUERRA-DUCHARME: Yeah.

1 MR. DAMERON: That's what I would say.

2 A. This -- this is -- of course you know what  
3 this is, right?

4 BY MS. FINGUERRA-DUCHARME:

5 Q. No, no, explain it to me.

6 A. Okay. This here is Honda America's use  
7 of -- second use of DealerDashboard. I didn't  
8 maintain the first use. They originally had this  
9 titled DealerDashboard, and that's when I sent them a  
10 cease and desist. They corrected this page to -- in  
11 its current state, and in its current state it still  
12 was popping up in the search listings. And I sent  
13 them a second cease and desist, and then it was  
14 removed.

15 Q. But this is with GM. Am I missing  
16 something here?

17 A. Yeah, exactly, GM.

18 Q. So this is for your dealer principal and  
19 general manager, okay.

20 A. Right.

21 Q. So this is -- you're saying that this is  
22 put out by Honda?

23 A. Correct.

24 Q. Okay. But it doesn't say Honda anywhere,  
25 or did I miss it?

1           A.     Well --

2           Q.     Because when I saw the GM, I was thinking  
3 General Motors, but --

4           A.     Well, I did, too, but I --

5           Q.     -- that stands for -- that stands for  
6 general manager?

7           A.     I did, too, the second time it showed up,  
8 and I thought, oh, no, now you're going to work for  
9 GM --

10          Q.     Right, right.

11          A.     -- but it was just a modification from --

12          Q.     From -- okay, this --

13          A.     -- from the original use --

14          Q.     Okay. Because this --

15          A.     -- that Honda was using, and I sent them a  
16 cease and desist.

17          Q.     Okay.

18          A.     And I don't know -- it is Honda dealers, I  
19 -- and it -- you know, Honda made it -- when I sent  
20 the cease and desist, Honda made the changes. Now,  
21 who -- I can't see where it's hosted. I thought I  
22 had the listing of the Web site address. I know in  
23 my answer I've listed it. Let me find the answer.

24          Q.     It just says appearing in search engines.

25          A.     I didn't -- I think -- I didn't list

1 the --

2 Q. No.

3 A. I thought I listed the Web site address.

4 I know it's in the --

5 Q. Oh, I see -- well, actually I don't know

6 if -- it's okay.

7 A. That's what that is.

8 Q. Okay.

9 A. That was -- that was the second generation  
10 of the use of DealerDashboard on the Honda Web site  
11 for which generated a cease and desist and --

12 Q. And --

13 A. -- led to the ultimate opposition to this  
14 trademark.

15 Q. And to be clear, because I think that you  
16 had mentioned this before, you said that you don't  
17 have a strong hold on the term "dealer," you don't  
18 have a strong hold on the term "dashboard"?

19 A. Separately.

20 Q. But you feel as if having those two terms  
21 together is a problem, is that --

22 A. Correct.

23 Q. -- that's where you're more -- that's  
24 where your rights lie?

25 A. Correct.

1 Q. And you feel that way whether it's put  
2 together as one word or two words?

3 A. Or two words.

4 Q. Okay.

5 A. In the automotive industry.

6 Q. Okay. The next is the Wayback machine, we  
7 spoke about that before. This is just -- and then  
8 this last -- or second to last document, "The  
9 Commercial/Business Lender Directory"?

10 A. Yeah, that would be the link onto that.  
11 If you recall at the -- on the home page, on the  
12 left-hand side, commercial lenders, I told you that  
13 it was an opportunity for dealers to click on and  
14 purchase a directory where they could find financing  
15 sources, that's what this is.

16 Q. Gotcha. Then the last, was that an e-mail  
17 you were referring to before? I wasn't sure who  
18 Amanda Kern was and what she -- what you guys were  
19 discussing here.

20 A. Oh, okay. That -- that is DSC.

21 Q. Okay.

22 A. She is my direct contact at DSC for which  
23 you have the agreement on the floorplan company.

24 Q. Right, okay. So you were asking her -- I  
25 got it now.

1           A.    You were asking me for customers, and --  
2 and I was trying to get permission from her because  
3 they're -- actually, they're her customers.

4           Q.    Right.

5           A.    I'm an agent, so I was asking them what I  
6 could give you and --

7           Q.    I understand. So these are four -- four  
8 people -- four dealers have gone through you for  
9 financing?

10          A.    Yes.

11          Q.    And this reflects that?

12          A.    Right.

13          Q.    I understand, okay. I think that that --

14          A.    I basically was just trying to comply with  
15 your request.

16          Q.    No, I appreciate that. I just couldn't  
17 understand what -- what -- now, after the deposition,  
18 I -- I understand this, but when I looked at it for  
19 the first time, I didn't know what you guys were  
20 talking about, so -- okay.

21                MS. FINGUERRA-DUCHARME: I assume that you  
22 have no questions?

23                MR. DAMERON: No.

24                MS. FINGUERRA-DUCHARME: Do you want to  
25 ask yourself any questions? Okay. That's it.

1 Thank you very much for your cooperation. I  
2 appreciate it.

3

4

5

6

-----MICHAEL E. DALTON-----

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DEPOSITION CONCLUDED AT 4:11 P.M.

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## C E R T I F I C A T E

STATE OF OHIO :  
COUNTY OF BUTLER : SS

I, Wendy L. Raymer, RPR, CRR, the undersigned,  
a duly qualified and commissioned notary public  
within and for the State of Ohio, do hereby certify  
that before the giving of his aforesaid deposition,  
MICHAEL E. DALTON was by me first duly sworn to  
depose the truth, the whole truth and nothing but the  
truth; that the foregoing is the deposition given at  
said time and place by MICHAEL E. DALTON; that said  
deposition was taken in all respects pursuant to  
stipulations of counsel; that I am neither a relative  
of nor employee of any of the parties or their  
counsel, and have no interest whatever in the result  
of the action; that I am not, nor is the court  
reporting firm with which I am affiliated, under a  
contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I hereunto set my hand and  
official seal of office at Hamilton, Ohio, this 19<sup>th</sup>  
day of May, 2008.

*Wendy L. Raymer*

My commission expires: S/Wendy L. Raymer, RPR, CRR  
December 6, 2011. Notary Public - State of Ohio



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ERRATA SHEET

INSTRUCTIONS: After reading the transcript of your deposition, note any change or correction to your testimony and the reason therefor on this sheet. DO NOT make any marks or notations on the transcript volume itself. Sign and date this Errata Sheet (before a Notary Public, if required).

(UPON COMPLETION, unless otherwise instructed by counsel, forward these original Errata Pages, with the original Reading and Signing Certificate to the attorney who began the questioning process.)

# ERRATA SHEET

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**WITNESS NAME:** \_\_\_\_\_

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Witness Signature: \_\_\_\_\_

Subscribed and sworn to me before this \_\_\_\_ day of \_\_\_\_\_, 2008

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